CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2909

Heard in Calgary, Wednesday, 12 November 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Claim of behalf of Locomotive Engineer B.R. McRae of Vancouver, B.C. for the allowance provided in article 1.5(b) of agreement 1.2 and the memorandum of agreement dated May 05, 1995.

JOINT STATEMENT OF ISSUE:

On April 19, 1997, Locomotive Engineer McRae was called for train 126 in straight away service from Vancouver to Kamloops, B.C. Locomotive Engineer McRae operated train 126 from Thorton yard to Spences Bridge, approximately 164.5 miles, where he was instructed to set out his train and deadhead to Kamloops via taxi. A claim for the run mile allowance was submitted based on 254 road miles.

It is the Brotherhood's position that Locomotive Engineer McRae handled train 126 during his tour of duty on April 19, 1997 and is therefore entitled to the "Run Mile" allowance of $35.00 pursuant to Article 1.5(b) of agreement 1.2 and the memorandum of agreement dated May 05, 1995.

The Company disagrees.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) D. J. SHEWCHUK	(SGD.) J. TORCHIA
FOR: GENERAL CHAIRMAN	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Labour Relations Officer, Edmonton
J. Torchia	– Manager, Labour Relations, Edmonton
J. Dixon	– Assistant Manager, Labour Relations, Edmonton
K. Morris	– Labour Relations Officer, Edmonton
S. Blackmore	– Labour Relations Officer, Edmonton

And on behalf of the Council:

D. J. Shewchuk	– Senior Vice-Chairman, Saskatoon
D. E. Brummund	–Vice-Chairman, Kamloops

AWARD OF THE ARBITRATOR

This grievance turns on the interpretation of article 1.5(b) of the collective agreement. It provides for an allowance to be paid to locomotive engineers based on the length of their run, "… over and above all other earnings for the tour of duty". The allowances were amended by a memorandum of agreement dated May 5, 1995, in recognition of extended runs.

The dispute in this case is simple, and concerns a monetary difference of some $12.00. On April 19, 1997 the grievor was ordered in straight-away service from Thorton yard to Kamloops. In fact he was compelled to stop operating his train short of his destination by reason of the expiration of his rest limit. His movement was therefore stopped at Spences Bridge at 02:35 on April 20, 1997, where he was relieved from operating the train. Thereafter he departed Spences Bridge at 02:50, deadheading by taxi to Kamloops, where he arrived with an off duty time of 04:15. On behalf of the grievor the Council claims a run mile allowance of $35.00 based on 254 miles, being the run distance between Thorton yard and Kamloops. That would entitle the grievor to the payment of $35.00 for the run length allowance of 241 to 260 road miles as provided under the amended terms of article 1.5(b) of the collective agreement.

The Company takes a different view, however. It submits that Mr. McRae is entitled only to the payment of $22.50 as a run length allowance, as he operated his train over a distance of 163.7 miles from Thorton yard to Spences Bridge. That, it submits, corresponds to the payment of $22.50, the scale of the run length allowance for distances from 151 to 200 road miles.

The issue is whether the deadhead portion claimed by the grievor should be payable as part of the run length allowance. The Arbitrator is compelled to the conclusion that it should not. Article 1.5(b) of the collective agreement provides, in part:

> Locomotive engineers employed on trains operating in through freight service on which no assistant conductor forms part of the train crew consist will be paid the following allowance per tour of duty, according to the length of run, over and above all other earnings for the tour of duty:
>
> 151 to 200 road miles - $22.50
>
> …
>
> This allowance does not apply to locomotive engineers deadheading.

The following text was added to article 1.5(b) by the memorandum of agreement dated May 5, 1995:

> When operating in territory outlined in paragraph 1.1 herein, in a conductor-only operation, the following allowances will be paid per tour of duty, according to the length of the run over and above all other earnings for the tour of duty:
>
> 241 to 260 road miles - $35.00
>
> …

As the language of the article indicates, the allowance is intended to be paid to locomotive engineers "employed on trains operating". It is specifically conceived in recognition of the greater burden on the locomotive engineer who is compelled to function without the benefit of an assistant conductor as part of the train crew. When that language is considered, from a purposive standpoint, it becomes doubtful why the parties would have intended the allowance to be payable for the deadheading portion of a given tour of duty. It is within the purpose of the payment of conductor-only operations, which the final sentence of the article should be understood. It specifically states that the allowance is not payable for deadheading. I am satisfied that the parties intended that deadheading, whether in whole or in part, is not to be included in the allowances.

That conclusion, moreover, is consistent with the use of the phrase "length of run" which appears to speak to the "run" over which the locomotive engineer is required to operate a train, and not the overall distance he or she may be compelled to travel both in active service and deadheading. The phrase "according to the length of run" would suggest that the parties intended to address that portion of the tour of duty during which a locomotive engineer is assigned to run his or her train. An arguably different interpretation might be supported had the parties referred to the "length of trip", bearing in mind that the words "run" and "trip" can have different meanings as they arise within the collective agreement.

Upon a consideration of both the language of article 1.5(b) of the collective agreement, and a purposive understanding of its intention, the Arbitrator is satisfied that the interpretation of the Company is to be preferred. For these reasons the grievance must be dismissed.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR