CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3230

Heard in Montreal, Thursday, December 13, 2001

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Declined time claims relative to the misapplication of article 68 – Hostling of collective agreement 1.2 at Prince Rupert, B.C.

BROTHERHOOD'S STATEMENT OF ISSUE:

On July 10, 1996, the Brotherhood initiated a policy grievance in respect of the Company's decision to decline a contractual payment to locomotive engineers for placing and removing locomotives from a shop building at Prince Rupert.

The Brotherhood contends that given hostlers are not employed at Prince Rupert, article 68 of collective agreement 1.2 contemplates that a payment must be made on the minute basis, with a minimum of 15 minutes, when required to put a locomotive in or take a locomotive out of the shop.

Accordingly, the Brotherhood asks that all claims associated with this grievance be paid.

The Company has declined the Brotherhood's grievance.

FOR THE COUNCIL:

(SGD.) D. E. BRUMMUND
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. MacDougald	– Manager, Labour Relations, Montreal
D. Coughlin	– Consultant
J. Gosse	– Transportation Supervisor
R. Norissette	– Manager – Operating Pctces - Champlain

And on behalf of the Council:

D. E. Brummund	– Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

This grievance relates to the application of the following provision of the collective agreement:

> **68 – Hostling**
>
> **68.1** Locomotive engineers will be paid on the minute basis, with a minimum of 15 minutes when required to put a locomotive in or take a locomotive out of the shop. Such time will be paid for at a rate per hour of 1/8th or 15th, as the case may be, of the daily rate applicable to the class of locomotive and service, and will not be used to make up the basic day. Time so paid, will not in included in computing overtime or terminal time. This article will apply only to locations where no hostlers are employed unless locomotive engineers are requested by the appropriate officer of the Company to perform such work at locations where hostlers are employed.

The Council claims that it has been denied proper payment for work performed by locomotive engineers who, when going on duty or going off duty at Prince Rupert, were required to move their locomotive into or out of a building which was once a motive power repair facility. It appears not to be disputed that the building in question was for some years a running point maintenance shop for both locomotives and cars. The locomotive shop facility effectively closed in 1986. However, to protect equipment against vandalism, the Company continued to store locomotives inside the shop building. It also appears that for a number of years, until fairly recently, some car repairs were still performed in the car shop portion of the building. It seems that the building may since have been torn down.

The instant grievance concerns claims made commencing in 1996. Locomotive engineers maintain that they are entitled to the payment for hostling their locomotive when they were required to store it in the building, or to remove it from storage at the commencement of their tour of duty. The claim would effectively amount to the payment of fifteen minutes at the commencement of a tour of duty, and fifteen minutes at the end of a tour, over and above terminal time and normal wages for the tour of duty in question.

The Company asserts that the building became in fact no more than a shed, and cannot be said to have qualified as a "shop" since 1986. In that circumstance, it maintains that the provisions of article 68.1 of the collective agreement do not come into play. It also stresses that in fact the storing and removal of a locomotive from the building is accomplished without difficulty within the normal ten minutes of terminal time allotted to locomotive engineers at the commencement and at the end of their tour of duty. The Company's representative also notes that if any problem should arise which would extend the time taken by a locomotive engineer he or she would in any event be paid on the minute basis for any extra, beyond the twenty minutes of terminal time possible on a given tour of duty.

It does not appear disputed that no hostlers were employed at Prince Rupert during the period of the claims which are the subject of this grievance. The issue therefore becomes whether the building in question can be fairly qualified as a "shop" within the meaning of article 68.1 of the collective agreement. On a review of the material and representations made, the Arbitrator is satisfied that in some situations the building in question was used as something more than a shed or storage facility. The unchallenged representation of the Council's representative is that, at least on some occasions, even after its closure, the former running shop was used as a service facility for locomotives. In that regard he submits that after the closing of the running point maintenance shop in 1986 locomotives continued to receive some maintenance service inside the building, including watering, fuelling, and service such as the changing of brake shoes.

In the Arbitrator's view when a locomotive engineer was required to take his or her locomotive to or from the building in question, where the presence of the locomotive in the facility was, in part, for a purpose such as watering, fuelling or the changing of brake shoes or other equipment, the conditions of article 68.1 would be met, and the payment contemplated within it would have been appropriately owing. However, on those occasions when a locomotive was simply stored inside the building, as it might be stored inside a shed, the facility could not be said to be utilized as a shop, or to constitute a shop for the purposes of article 68.1 of the collective agreement.

The Arbitrator appreciates that there might be some difficulty in ascertaining whether the claims, made over a substantial period of time, relate to those occasions when the building was in fact being utilized as a shop for the purposes of servicing a given locomotive, for example by fuelling or changing brake shoes, or whether it was merely

used as a storage shed. That difficulty cannot, however, change the application of article 68.1 of the collective agreement in a case such as this. In the circumstances, therefore, the Arbitrator deems it most appropriate to simply make the declaration of principle as articulated above, and remit this matter to the parties for their own discussion and possible settlement of specific claims which may have been made and be the subject of this grievance, in keeping with the instant ruling. Should they be unable to do so the matter may be spoken to.

For the reasons elaborated, and to the extent described, the grievance is allowed, in part.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR