# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 3341

Heard in Montreal, Tuesday, 10 June 2003

concerning

## CANADIAN NATIONAL RAILWAY COMPANY

and

## BROTHERHOOD OF LOCOMOTIVE ENGINEERS

**DISPUTE:**

Claim on behalf of Locomotive Engineer G. Howe, pin #861517, for payment of 100 miles under Eastern Canada System of Pay, principle #5.

**JOINT STATEMENT OF ISSUE:**

On July 4, 2000, Locomotive Engineer Howe was operating train #168 from Capreol to Toronto. Upon arrival at Brampton Intermodal Terminal (BIT) the crew received yarding instructions for their train. After completing the yarding of their train, they were instructed to lift locomotives 5734 and 5493 for delivery to MacMillan Yard.

The Brotherhood contends that Mr. Howe is entitled to the 100 miles claim under Eastern Canada System of Pay, principle #5, "Final Terminal Duties", as written on October 4, 2000.

Note: the Eastern Canada System of Pay was re-written on October 28, 2000, wherein "Final Terminal Duties" are described under principle #6.

The Company contends that this employee and others were properly compensated for lifting these units under Agreement 1.1, article 19.1 for "Picking up and Setting Out Diesel Units in Road Service". The allowance was paid as stipulated in paragraph 1.14 of article 1.

The payment of this allowance was confirmed by letter to the Brotherhood dated 10 December 2002.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
|---|---|
| (SGD.) RICHARD DYON | (SGD.) J. KRAWEC |
| GENERAL CHAIRMAN | FOR: SENIOR VICE-PRESIDENT, EASTERN DIVISION |

There appeared on behalf of the Company:

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|---|---|
| B. Hogan | – Manager, Work Force Strategy, Toronto |
| B. Olson | – Director, Human Resources, Toronto |
| D. Laurendeau | – Manager, Human Resources, Montreal |

And on behalf of the Brotherhood:

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| R. Dyon | – General Chairman, Montreal |
| P. Vickers | – Vice-General Chairman, Montreal |
| R. Leclerc | – General Chairman, Grand-Mère |
| R. Theriault | – Local Chairman, Montreal |

## AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On July 4, 2000 Locomotive Engineer G. Howe operated train 168 from Capreol to the objective terminal of MacMillan Yard. It is common ground that upon arrival at the Brampton Intermodal Terminal (BIT) the grievor set off his train and was proceeding to MacMillan Yard when he was requested to pick up two locomotive units for furtherance from BIT to MacMillan Yard. The issue is whether the grievor is entitled to the payment of an extra 100 miles for the work so performed, or to any other payment within the system of pay principle #6, governing final terminal duties.

By way of background it is necessary to clarify that at the time of the instant claim the parties were bound by the terms of the Eastern Canada System of Pay Agreement, dated October 26. 2000. It appears that the provisions of that agreement have now been terminated, causing the instant case to be arguably limited in its scope for future purposes.

The Company asserts that the circumstance in which the grievor found himself is effectively covered by the formula for the flat rate of pay developed under the new system of pay agreement. It's representative draws to the Arbitrator's attention the provisions of article 19 of collective agreement 1.1 which reads, in part, as follows:

> **19.1** Locomotive engineers called for road service who are required to pick up or set out a diesel unit (or units) involving their locomotive consist will be paid the allowance specified in paragraph 1.14 of article 1.
>
> **19.2** The term "unit (or units)" refers to a unit which is coupled in the locomotive consist and is in charge of the locomotive engineer making a claim under this article.

Article 1.14 of the collective agreement, which governs the picking up and setting out of diesel units, provides as follows:

> **1.14** Locomotive engineers called for road service who are required to pick up or set out a diesel unit (or units) involving their locomotive consist will be paid an allowance of:

| | Effective | | |
|---|---|---|---|
| | Jan 1/98 | Jan 1/99 | Jan 1/2000 |
| | $ | $ | $ |
| Picking up one or more unit already coupled or setting out of one or more than one unit together | 6.78 | 6.92 | 7.06 |
| Picking up or setting out more than one unit not already coupled or setting out more than one unit where units must be uncoupled | 11.24 | 11.48 | 11.69 |

> The conditions attached to the payment of this allowance are as set out in article 19.

The Company maintains that it is the allowances noted above which would be payable. It further argues that those allowances are already factored into the flat rate of pay for locomotive engineers in road service. In that regard it draws to the Arbitrator's attention a document entitled "Rates Per Mile Used in Construction of Flat Rates". That document illustrates the calculation used to arrive at flat rates of compensation for locomotive engineers. It is based on all payments made to locomotive engineers in Eastern Canada in 1997, including all monies paid for the picking up and dropping off of diesel units in accordance with article 1.14 of the collective agreement. On that basis, the Company maintains that the grievor already received the payments to which he was entitled under the new system of pay.

The Brotherhood maintains that the system of pay agreement expressly contemplates the payment of an adjustor of 100 miles in the factual circumstance described in this dispute. It's representatives note that the objective terminal of MacMillan Yard did have yard engines on duty, and that under the new system of pay agreement incoming road crews required to perform "other work" when yard engines are on duty are entitled to the minimum of 100 miles for such work. In that regard reference is made to article 13.1 of the collective agreement which reads as follows:

> **13.1** Where yard engines are on duty locomotive engineers will be considered released from duty on arrival at objective terminals, after yarding their train in a minimum number of tracks, including putting their caboose away if necessary, except that they may be required to perform switching in connection with their own train to set off and if necessary spot important or bad order cars. To accomplish this work they may be required to respot other equipment involved in performing this service. Should they be required to perform other work when yard engines are on duty or to make short runs out of the terminal they will be paid a minimum of 100 miles for such service.

In the Arbitrator's view it is the terms of the System of Pay Agreement of October 26, 2000 which must govern. The introduction to that document is categorical that in any conflict between the terms of that agreement and any other agreement, including the collective agreement, it must prevail. It reads, in part, as follows:

> The parties further agree that where in dispute this agreement shall take precedence over any other agreement.

In the Arbitrator's view the provisions of the system of pay agreement, and in particular Principle 6 of that document, deal specifically with the facts of the case at hand. Firstly, article 6 deals, to some extent, with the meaning of a final terminal. In that regard it reads, in part, as follows:

> **Final Terminal Duties**
>
> **6.1** Payment for inspection time, final terminal time and designated cuts are included in the flat rate value established for the tour for which called.
>
> Upon arrival at the final terminal road crews may be required to:
>
> (a) Set off 2 blocks of cars into 2 designated tracks.
>
> (b) Yard their train into a minimum number of tracks, including setting over the surplus cars due to insufficient track length.
>
> **6.2** Crews will not be required to make a lift or perform switching upon arrival at their final terminal unless indicated in the following examples:
>
> Example 1: A crew is ordered from MacMillan Yard to Port Huron with a lift of through traffic at Sarnia. The crew makes the lift at Sarnia and goes off duty there instead of proceeding to Port Huron – Adjustment is payable.
>
> Example 2: A crew is ordered from MacMillan Yard to Port Huron. They make a lift of through traffic at Sarnia and proceed to Port Huron – No adjustment is payable.
>
> **6.3 Where the final terminal consists of a series of yards,** crews will not be required to make a lift or perform switching at the change off point or the off duty yard unless indicated in the following examples:
>
> Example 1: A crew ordered to Snyder West makes a lift of through traffic at B.I.T. and does not proceed to Snyder West – Adjustment is payable
>
> Example 2: A crew ordered to Snyder West makes a lift of through traffic at B.I.T. then proceeds to Snyder West to change crews – No adjustment is payable
>
> (emphasis added)

In the Arbitrator's view it is significant that the parties have adverted to the circumstance in which a final terminal consists of a series of yards. It is in that context that they then agreed to the following question and answer, incorporated immediately afterwards in the text of their agreement.

> **Questions and Answers Pertaining to Final Terminal**
>
> **Q1.** What is the Adjustment if I am required to make a lift or perform switching at the final terminal which is not in connection with my own train or is not specifically provided for herein?
>
> **A1.** Employees performing switching will be compensated the Adjustment rate of pay provided in paragraph 1.5(c) for each hour or portion thereof so occupied. In addition, each

employee who would have been called, had an extra yard assignment been called for the time switching commenced, will be entitled to the yard Adjustment payment contained in paragraph 1.5(c).

**Q2.** Is the setting off of locomotives considered switching at the final terminal?

**A2.** No.

In the Arbitrator's view the expression "final terminal" appearing in Q1 above must be taken to include a final terminal which consists of a series of yards. On that basis the language so agreed would appear to cover a lift or switching anywhere within the final terminal, which is to say anywhere within the series of yards that may comprise a final terminal. In that context it is difficult for the Arbitrator to accept the argument of the Company's representative that the payment so contemplated is only available at the "objective terminal" which would mean the yard within a series of yards which is the ultimate destination of a train. In addition, the Arbitrator has some reservation as to the application of articles 19 and 1.14 of article 1 of the collective agreement, to the extent that the language of those provisions appears to address the circumstance of locomotive engineers in road service picking up or setting out diesel units "involving their locomotive consist", which might arguably refer to locomotives which become part of their own train. It is unnecessary, however, for the purpose of this dispute to resolve that issue, given what I consider to be the clear and unequivocal language of the System of Pay Agreement of October 26, 2000, which must in any event prevail.

In the case at hand it is clear that Locomotive Engineer Howe was required to make a lift at the final terminal when he was instructed, after yarding his train, to pick up two locomotives for transfer to MacMillan Yard. That movement was clearly not in connection with his own train and is not a movement of the type specified within the examples in articles 6.2 and 6.3. Given that the language of Principle 6 recognizes that a final terminal can include a series of yards, the Arbitrator has no alternative but to conclude that the movement which is the subject of this dispute falls specifically within the purview of question and answer 1, reproduced above. Nor would question and answer 2 have any material impact on the Arbitrator's conclusion. Even if the setting off of locomotives cannot be considered switching at the final terminal, assuming that the reference is to locomotives other than one's own power, the lifting and movement of locomotives in the manner described would plainly constitute switching within the meaning and intent of principle 6. In the circumstances, therefore, the grievor is entitled to the adjustment rate of pay provided in paragraph 1.5(c) of the rate of pay agreement, which is 100 miles per hour.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs the Company to compensate the grievor for the claim as submitted.

June 13, 2003

**(signed) MICHEL G. PICHER**
**ARBITRATOR**