CANADIAN RAIIWAY 0FFICE OF ARBITRATION

CASE N0. 10

Heard at Montreal, Wednesday, July 7th, 1965

Concerning
CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

THE BROTHERH00D OF RAILROAD TRAINMEN

DISPUTE:

Concerning the payment of trainman deadheaded to an intermediate point to handle work train service.

JOINT STATEMENT OF ISSUE:

On November 18, 1963, Conductor R. Bernier and Trainman C. A.Baril were ordered at Montreal to deadhead on Train No. 133 at 5:35 p.m., to Fassett, to man Burro Crane, commencing 7:00 a.m., November 19th. Crew arrived at Fassett at approximately 7:30 p m., November 18th, and were put off duty until required the following morning.

Wage ticket claim was submitted for continuous time, commencing from the time of deadheading at 5:35 p.m., on November 18th up until completion of tour of duty at 3:45 p.m., on November 19th. This was declined by the Company, with request being made that two tickets be submitted - one for 100 miles deadheading on November l8th and the second to cover payment for work train service from the time duty commenced on November 19th.

The Brotherhood contends that this is in violation of the provisions of Article 22(b) paragraphs 1 and 2 of the collective agreement.

FOR THE EMPLOYEES:

(Sgd) J. I. Harris
General Chairman

FOR THE COMPANY:

(Sgd) A.M. Hand
General Manager
Atlantic Region

AWARD OF THE ARBITRATOR

The following are reasons for judgment delivered on July lOth, 1965, by Mr. J. A.Hanrahan, Arbitrator, following a hearing held before him in Montreal, Quebec, on July 7th, 1965, under the authority conferred by the terms of an agreement between the parties dated January 7th, 1965:

As indicated in the joint statement of dispute the crew in question was called for unassigned work train service at Fassett, about seventy miles from Montreal. They were required to deadhead there on November 18, 1963, on a train leaving Montreal at 4.35. They arrived there approximately two hours later The work train service consisted of manning a orane working from that point and their duties on it were scheduled to commence the following morning.

It is the Company's action in putting the crew off duty on arrival at Fassett and not connnencing their work train service pay
until the following morning to which objection is made. Mr. Harris argued this was in violation of Article 22 (b), paragraphs 1 and 2 of the collective agreement; that they should have been paid on the basis of continuous time, commencing from the time they started the deadhead on November 18th until completion of their work at 3.45 p.m.,
the following day.

The Company paid the crew on the basis of 100 miles for deadheading on November 18th, with a separate payment for work train service from the time it was claimed this commenced on the morning of November 19th.

Article 22, under the heading "Deadheading" reads:

> "(a) Trainmen required by the Company to deadhead from one terminal to another, irrespective of the manner in which the deadheading is done, shall be paid on the basis of 12.5 miles per hour (and overtime earned if any) at the through freight rate for the actual time occupied. Time to be calculated from time ordered until arrival at objective terminal; Except as provided in Clause (b) not less than 8 hours will be paid.
>
> (b) Trainmen required by the Company to deadhead to an intermediate point and going from such point to a terminal in service or going into work train service for the balance of the day, or vice versa, will be paid for the combination deadheading and working service as follows:
>
> When deadheading precedes working service the deadheading payment will be continuous from time ordered until work service actually begins; when deadheading follows working service, payment for working service will continue until deadheading cormences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate

applicable in the combination will be allowed.

For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day.

(c) A spare trainman deadheaded to the terminal of a regular assignment or to the point at which a work train is laid up to relieve on the assignment or work train will not be regarded as in combination service and will be paid not less than a minimum day."

During his argument Mr. Harris stressed the importance he placed upon Article 11, Clause (k) (1) as well as Clause (e) of Article 20. The first reads:

"Road miles will be the distance from the outer main track switch or designated point at initia1 terminal to the outer main track switch or designated point at final terminal. Road time will commence when payment for initial terminal time stops and will end when payment for final terminal time begins."

Article 11, it is to be noted, appears under the heading "Freight Service" and as can be seen Clause (k) (1) deals with trips from a terminal to a terminal. On the trip from Montreal on which this deadheading was made, Ottawa would be the next terminal. Fassett was an intermediate point.

Article 20 appears under the heading "work Train Service" and the clause referred to, (e), reads:

"Crews engaged in any service covered by and paid for under the provisions of the Article may be laid up at intermediate points at the end of their day's work whan necessary to do so."

Because "deadheading" is not mentioned in Article 20, Mr. Harris reasoned, a crew cannot be laid up and taken off duty until they have completed a tour of duty in actual work service.

Mr. Firmin's answer to this suggestion was that this particular crew did not commence their work service until the morning of November 19th. Therefore, the provisions of Article 20 would apply from that time.

A study of Article 22 shows it provides for both deadheading

in combination with other working service as well as straight-away deadheading. From the facts disclosed it is clear these particular employees did not perform combination service as described in the first and second paragraphs of Article 22, Clause (b). They were ordered to deadhead, not to a terminal but to an intermediate point. This, in the opinion of the Arbitrator, was therefore a straight deadheading, other than between terminals, for which the third paragraph of Article 22, Clause (b) was designed and agreed to by the parties. For the two hours taken for the trip they were paid a minimum day of 100 miles. When they commenced their actual work service the following day, there is no dispute they were paid on the proper basis for such duties.

A considerable portion of Mr. Harris' brief was concerned with the history both of past practice and negotiating efforts prior to the inclusion of the present provision in the current agreement It is, of course, the final provision, executed by the parties, that must govern.

In the opinion of the Arbitrator, a proper interpretation was placed by the Company upon Article 22 (b) in applying it to the employees in the circumstances related.

For these reasons this claim must be disallowed.

J.A. HANRAHAN

ARBITRATOR