

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 85

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PACIFIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Conductor J. Shabbits, Moose Jaw, for 200 miles when deadheading from Medicine Hat to Moose Jaw on Train No. 2, September 4th, 1966.

JOINT STATEMENT OF ISSUE:

Two Medicine Hat crews and one Moose Jaw crew were assigned to Passenger Trains 2 and 1 between Medicine Hat and Moose Jaw, Medicine Hat being the Home Terminal. This was an Inter-Seniority District run between Section 3 (Brandon - Moose Jaw - Sutherland) and District 1 (Medicine Hat - Lethbridge - Calgary - Edmonton), Passenger and Mixed Seniority Districts, manned in accordance with the provisions of Article 36, Clause (d).

On September 4th, 1966 regular Conductor G. H. McLeod, was not available at Moose Jaw for Train No. 1 to Medicine Hat and spare freight Conductor J. Shabbits was called to fill the vacancy. After completing the run at Medicine Hat, Shabbits was informed that Conductor McLeod would be available for his next regular trip leaving Medicine Hat, and he was instructed to deadhead back to Moose Jaw.

Swift Current is the dividing point between the two seniority districts and the away from home terminal for Moose Jaw and Medicine Hat freight crews, so Conductor Shabbits submitted a claim for 100 miles from Medicine Hat to Swift Current, and 100 miles from Swift Current to Moose Jaw on the basis of the provisions of Article 22, Clause (a), which reads:

"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 1/2 miles per hour at the through freight rate for the actual time occupied. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided in Clause (b) of this Article, not less than eight hours will be paid; overtime pro rata."

Payment of claim was declined by the Company, Conductor Shabbits being allowed payment for 100 miles on the grounds that it was a continuous trip deadheading on Train No. 2 from Medicine Hat to Moose Jaw, the terminals of the passenger assignment.

The Brotherhood contends that terms and conditions applying to an Inter-Seniority District passenger assignment have no bearing on payment to unassigned Trainmen in the application of Article 22, Clause (a) and that spare Conductor Shabbits' claim was properly submitted after being released at Medicine Hat, and instructed to return to Moose Jaw, his Home Terminal in freight service.

FOR THE EMPLOYEES:

(Sgd) S. McDONALD
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd) R. S. ALLISON
GENERAL MANAGER - PACIFIC
REGION

There appeared on behalf of the Company:

J. G. Benedetti	- Supervisor Personnel & Labour Relations, C.P.R., Vancouver
C. F. parkinson	- Labour Relations Assistant, C.P.R., Montreal

And on behalf of the Brotherhood:

R. T. O'Brien	- Vice Chairman, B.R.T. Calgary
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AWARD OF THE ARBITRATOR

It was established in this matter that Conductor G. H. McLeod was the conductor from seniority Section 3 assigned to Trains 2 and 1 operating between Medicine Hat and Moose Jaw. On September 4th, 1966, he was not available to man his run on Train No. 1 from Moose Jaw to Medicine Hat, his position being filled by the grievor, freight Conductor J. Shabbits of Moose Jaw.

After completing the run to Medicine Hat, Conductor Shabbits was advised that Conductor McLeod would be available for his next regular trip on Train 2 leaving Medicine Hat, September 4, 1966. Conductor Shabbits was instructed to deadhead on Train 2 ex Medicine Hat 20.43K September 4, 1966, to Moose Jaw where he arrived at 2.41K, September 5, after a total elapsed time of 5 hours and 58 minutes.

Conductor Shabbits submitted separate claims for deadheading from Medicine Hat to Swift Current and from Swift Current to Moose Jaw each for 8 hours at 12 1/2 miles per hour (100 miles). These claims were rejected by the Company and he was allowed payment on a continuous time basis for the time ordered for at Medicine Hat until arrival at Moose Jaw, the objective terminal of the deadhead trip.

The Brotherhood contended that when Conductor Shabbits was released at Medicine Hat he was in the position of being off his promotion territory which does not extend west of Swift Current. Therefore, his first deadhead movement was from Medicine Hat to to Swift Current, the recognized away from home terminal for Moose Jaw crews. In order for him to return to service on his own promotion territory it was necessary for him to deadhead beyond Swift Current to Moose Jaw, where he could resume his former position at his home terminal.

Article 22, Clause (a), reads:

"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 1/2 miles per hour at the through freight rate for the actual time occupied. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided in Clause (b) of this article, not less than eight hours will be paid; overtime pro rata."

It was claimed for the grievor that Article 22, Clause (a) does not qualify the meaning of terminal in any respect, and it is recognized in the same manner as that defined in Article 11, Clause (c) (1) for the purpose of applying basic day rules.

It was urged that correspondence with the General Managers on both Regions to further clarify and specify the meaning of terminals, leaves no doubt that all regular points between which crews regularly run are recognized terminals.

An example was also given of a case, said to be parallel, occurring in April, 1965, where payment was made on instructions from the General Manager on the Prairie Region.

For the Company it was submitted that Conductor Shabbits, prior to his arrival at Moose Jaw, after deadheading from Medicine Hat, was not in unassigned freight service. Therefore, terminals as related to crews in such service were not applicable when he was deadheaded from Medicine Hat to Moose Jaw between which points he had run when relieving in assigned passenger service.

It was stated that Medicine Hat and Moose Jaw are the terminals, designated by bulletin, of the passenger run on which Conductor Shabbits was relieving. Had Conductor McLeod, it was urged, been deadheaded from Medicine Hat to Moose Jaw, these points being the terminals of his assignment he would, under the provisions of Article 22, Clause (a), have been entitled to payment for deadheading on a continuous time basis from the initial terminal Medicine Hat, until arrival at Moose Jaw, the objective terminal. It follows, therefore, it was reasoned, that Conductor Shabbits who was relieving Conductor McLeod, took on the conditions applying to his assignment and was only entitled to payment for deadheading on the same basis.

The important words in seeking the answer to this problem are contained, of course, in Article 22 (a) "Trainmen required by the Company to deadhead from one terminal to another"

In my opinion using the term "objective terminal" clarifies what was occurring and bears particular application to the language "required by the Company to deadhead from one terminal to another". On this occasion, the Company did not require Conductor Shabbits to return to Swift Current. It was only a station through which he passed enroute to his prescribed destination, namely, Moose Jaw. In other words, he was enroute from one terminal, Medicine Hat, to another terminal, Moose Jaw. In my opinion he was paid properly in accordance with that trip.

To interpret Section (a) of this Article in any other way could bring the unreasonable result that if returning from an assignment such as Conductor Shabbits took in replacing the other conductor, and he passed through several intermediate "terminals, after each one he could make the claim he did no this occasion. Nothing in the language in the Article under consideration makes apparent that was the intent of the parties.

For these reasons this claim is denied.

(Sgd) J. A. HANRAHAN
ARBITRATOR