CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 98

Heard at Montreal, Monday, December 11th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Sixteen time claims submitted by Yardman I. M. Brewer and R. J. Birmingham of Niagara Falls, Ontario, between October 8 and December 10, 1966.

JOINT STATEMENT OF ISSUE:

Yard Helper R. J. Birmingham, who was "the junior Yard Helper assigned to the spare board" at Niagara Falls, was assigned to a temporary vacancy on a regular relief assignment in accordance with that part of Memorandum of Agreement signed at Toronto, Ontario, November 30, 1954, reading:

> "Should no applications be received for a temporary vacancy as Yard Helper the junior Yard Helper assigned to the spare board at the terminal will be assigned."

The assignment worked at Niagara Falls on Sundays, Mondays, Tuesdays and Wednesdays and at Welland on Saturdays. Yard Helper Birmingham travelled from Niagara Falls to commence work on the assignment Saturday, October 8, 1966 at Welland, which is a subsidiary station of Niagara Falls terminal, and completed work thereon Monday, October 17, 1966.

In addition to the payments received for travelling from Niagara Fall to Welland to assume the assignment and for the shift worked at Welland on October 8th, Yard Helper Birmingham submitted a time claim for payment of two hours for travelling from Welland to Niagara Falls that date. The Company declined payment of the claim and the Brotherhood alleges that, in refusing to make payment, the Company violated Article 105, Rule (c) of the collective agreement.

Fifteen claims dated between October 8 and December 10, 1966 were submitted by Yardman I. M. Brewer of Niagara Falls for travelling to or from Welland after assuming a position in the same assignment, under similar circumstances. Payment of these claims was likewise declined by the Company.

FOR THE EMPLOYEES:

(Sgd.) G. E. McCLELLAND

FOR THE COMPANY:

(Sgd.) E. K. HOUSE

GENERAL CHAIRMAN ASST. VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

R. C. St. Pierre	Labour Relations Assistant, C.N.R., Montreal
A. J. Del Torto	Labour Relations Assistart, C N R., Montreal
A. D. Andrew	Senior Agreements Analyst, C N.R , Montreal
A. S. Chapman	Labour Relations Assistant, C.N.R., Toronto

And on behalf of the Brotherhood:

G. E. McLellan	Assistant General Chairman, B.R.T., Toronto
C. G. Reid	Vice Chairman, B.R.T.

AWARD OF THE ARBITRATOR

As indicated this dispute involves the meaning to be attached to Article 105, Rule (c) of the Collective Agreement. It reads:

> "Yardmen when deadheading to exercise seniority rights, or returning after having done so, will not be entitled to compensation therefor. Deadheading in connection with relief work which men have bid in or claimed on seniority basis shall not be paid for, but when not so bid in or claimed, and the men are ordered by the Railway to deadhead, any such deadheading shall be paid for."

Other than the claims subsequent to October 8th being for 8 hours each, the fifteen claims dated between October 8 and December 10, 1966, in favour of Yardman I. M. Brewer were said to be in all pertinent respects similar to the claims of October 8, 1966, in favour of Yardman Birmingham.

By following what occurred in connection with Yardman Birmingham it was stated the principle involved would have equal application to Yardman Brewer.

A temporary vacancy for a position of yard helper on the Welland-Niagara Falls relief assignment was posted for to hours, or up to October 6, 1966 in accordance with Article 139, Rule (c) of the Collective Agreement. As no applications were received, Yardman Birmingham, who was the junior yard helper assigned to the spare board at the terminal, Niagara Falls, was assigned in compliance with the third paragraph of the Memorandum of Agreement, signed at Toronto, November 30, 1954.

Because Thursday, October 6, and Friday, October 7, were the assigned rest days for the relief assignment, Yardman Birmingham commenced work on the temporary vacancy, Saturday, October 8, at Welland and completed work thereon Monday, October 17, at Niagara Falls.

Welland is a subsidiary station to the terminal at Niagara Falls, Ontario, for yardmen of the 14th Seniority District. The one yard engine at Welland operates six days per week. Since October, 1953, when the five-day work week was established for yardmen, the yard

engine at Welland has been operated on the sixth day, Saturday, by a regular relief assignment which is worked at Niagara Falls on the other four days of its assigned work week; namely, Sunday, Monday, Tuesday and Wednesday.

On October 8, Yardman Birmingham was paid for travelling from Niagara Falls to Welland, in addition to the pay for the shift worked. He als submitted a time claim for two hours' pay for travelling that date from Wellan back to Niagara Falls. The Company declined payment and the Brotherhood alleges that, in refusing to make payment, the Company violated Article 105, Rule (c) of the collective agreement.

As stated, the dispute is based upon the meaning to be attached to Article 105, Rule (c). The Brotherhood contended that for an employee who is ordered to work on a particular assignment the rule provides compensation for all deadheading incurred while he is on that assignment. The Company held that, when an employee is so ordered, the rule stipulates compensation for only that deadheading incurred in going to commence work on the assignment and in returning after having completed work on that assignment.

For the Brotherhood no submission was made, other than what was considered the applicability of the language of Article 105, Rule (c), commencing from the beginning of the second sentence thereof.

A lengthy analysis of the wording of the provision was submitted for the Company. This contained the assertion that the words "deadheading" in connection with relief work must be read in the light of the first sentence of the Article, which has application to deadheading to take up relief work and deadheading after completion of such work. It was submitted that to interpret the words to include the whole span of time an employee is relieving on an assignment would be to grant employees compelled to perform relief work on assignments conditions superior to those applying to employees compelled to fill permanent assignments; further, it would be to disregard the fact that an employee is "ordered" by the Company to deadhead only on the trip going to "take up" the relief work and after completion of the assignment.

It was submitted that when Yard Helper Birmingham was ordered from Niagara Falls to Welland on October 8, 1966, to fill a vacancy for which no applications were received, he was compensated for deadheading. When he returned to Niagara Falls later that day, he was then on the assignment; he was neither exercising his seniority rights, nor returning after having done so, nor was he deadheading on order of the Company. He was at that time travelling in the course of the assignment and the collective agreement does not provide compensation for such travel.

A study of Artiole 105, Rule (c) convinces the parties have clearly excluded those who seek an assignment away from their home terminal, either of a permanent nature or in connection with relief work, from compensation for "deadheading". On the contrary those who go, not of their own accord, but who are ordered by the Company to make such a move, understandably are to be compensated for the deadheading time involved. The latter, in my opinion, are in quite a different position from those in the first two categories.

Whether those who are ordered to such an assignment are only entitled to be paid, however, when deadheading to and returning after the whole assignment has been completed is not clear, nor is it clear that they are to be paid for "deadleading" while actually travelling on the assignment. In other words ambiguity exists in the language used to make the actual intent clear.

Reference was made by the Company's representative to that portion of Case No. 11 of the Canadian Railway Office of Arbitration, reading,

> "If ambiguity does exist past practice, as it is commonly called, becomes important in attempting to determine what the parties had in mind in designing the provision."

It was submitted for the Company, and not refuted, that since 1953 the assignment on which Yard Helper Birmingham was working is only one of a number of such assignments; that in that period this was the first time an employee has submitted a claim for compensation for deadheading while actually relieving on such an assignment.

In the circumstances described, I believe recourse must be had to the past practice that has governed the administration of this provision in the past to determine how the parties intended the provision to be applied.

It has been made clear in other decisions that despite past practice when the language used is clear and explicit, the arbitrator is constrained to give effect to the thought expressed by the words used. As described, an intent to cover deadhead travel while on an assignment, as compared with that necessary to reach the point of the assignment, has not been made clear. If the former is to prevail, it remains, in my opinion, the subject for possible future negotiations.

For these reasons these claims are denied.

J. A. HANRAHAN
ARBITRATOR