CANADIAN RAlLWAY OFFICE OF ARBITRATION

CASE NO. 683

Heard at Montreal, Tuesday, November 14,1978

Concerning

ALGOMA CENTRAL RAlLWAY

and

UNlTED TRANSPORTATlON UNlON (T)

EXPARTE

DlSPUTE:

Claim by C. Headrick, continuous miles for deadheading and piloting the CNR AuxIliary from Oba to Hearst on January lOth and llth, 1978.

EMPLOYEE'S STATEMENT OF lSSUE:

On January lOth, 1978, Mr. Headrick was called S.A.P. to fill an emergency assignment to pilot a CNR Auxiliary Train over a portion of Algoma Central Railway, from Oba, Ontario to Hearst, Ontario.

Mr. Headrick submitted a claim for payment on the basis of continuous service. The claim was declined and the United Transportation Union Local 8S5 contends the Company is not following an accepted condition, violating Article 110, Paragraph (d) and Article 117 Paragraph (a).

FOR THE EMPLOYEE:

(SGD.) J. SANDlE
GENERAL CHAlRMAN

There appeared on behalf of the Company:

V. E. Hupka	Manager lndustrial Relations, AC Rly., Sault Ste. Marie
N. L. Mills	Superintendent Transportation, AC Rly., Sault Ste. Marie

And on behalf of the Brotherhood:

J. Sandie	General Chairman, U.T.U.(T) - Sault Ste. Marie

AWARD OF THE ARBITRATOR

On January 10, 1978, the grievor, a regularly assigned Brakeman and a qualified Conductor, was on his day off. He booked okay for spare Work at 1..00 p.m. that day. He was then called to work as a Conductor/Pilot to handle a CNR auxiliary train from Oba to Hearst.

This assignment required the grievor to deadhead from Hawk Junction

to Oba on Train No.5, to pilot the CN train from Oba to Hearst, and to deadhead from Hearst back to Hawk Junction the following day. The grievor carried out the assignment. He was paid on the basis of Article 9 (e) of the collective agreement. That article is as follows:

> "9 (e) Trainmen will be notified when called whether for straight-away or turn-around service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call , such as accident, engine failure, washout, snow blockade or such other like emergency."

The Company's position is that the grievor was called for a specific movement, Oba to Hearst, and that he should be paid deadhead miles Hawk Junction to Oba, running miles Oba to Hearst, terminal time and, in respect of the following day, deadhead miles Hearst to Hawk Junction. lt would seem that payment Was made on that basis.

The work on which the grievor was engaged was that of piloting. That is dealt with in Article 19 of the collective agreement, as follows:

> "Article 19 - Piloting
>
> Trainmen acting as pilots will be paid conductor's schedule rate and conditions applicable to the class of train piloted.
>
> Conductors run off their own territory over a line with which they are unacquainted, will, on request, be furnished with a pilot, a conductor if available, who will accompany the conductor.
>
> When a pilot, as defined in operating rules, is required, a competent trainman will be supplied in addition to the regular crew. A trainman unfamiliar with the physical characteristics of the road will not be required to go.
>
> Trainmen acting as pilots will be provided with free sleeping accommodations while away from their home terminal."

Paragraphs two and three of that article, which deal with when a pilot may be required, or with the crew to be supplied, are not material to this case. Paragraph one deals with the rate and Working conditions applicable and paragraph four requires that free sleeping accommodations be provided. The grievor was entitied to those benefits, and there is no suggestion they were not provided.

The Union contends that the grievor was entitled to continuous miles. It alleges a violation of Articles 110 (d) and 117 (a) of the collect agreement. Those articles are as follows:

> "110 (d) No local arrangements or rules which conflict with the generally accepted interpretation of the provisions of this agreement will be entered into unless first approved by the General Chairman affected and proper officer of the Railway."
>
> "117 (a) The Company will not initiate any material change in

> working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article."

Neither of these articles is relevant to the question of payment for a particular assignment. Either the grievor has been paid correctly in accordance with the provisions of the collective agreement, or he has not. If he has not been paid correctly, that is not a "change in working condition" it is simply an incorrect application of the collective agreement, and the remedy for that is not to invoke the provisions for discussion and negotiation set out in Article 117, it is simply to apply the collective agreement correctly. As to Article 110, it provides that local arrangements shall not prevail over collective agreement provisions unless there has been prior approval by the General Chairman and the proper officer. The Company does not rely on any such agreement, but has simply applied what would appear to be the material provisions of the collective agreement.

The Union contends that there has been an understanding that emergency piloting be paid for on a continuous basis. That this may be done is not denied by the Company, whose position is that was not, as far as the grievor was concerned, work of an "emergency" nature, but was simply a specific call which he accepted in his turn as a spare man. ln these circumstances the correct payment was made.

The Union also contended that the manning requirements of the collective agreement were not met. Such an allegation was not part of the original claim for wages, and does not affect the grievor's claim. lt raises a number of very different considerations which it would not be proper to attempt to deal with in this case.

For this particular assignment it has not been shown that the collective agreement was not properly applied so far as payment to the grievor is concerned. Accordingly the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR