

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1092

Heard at Montreal, Wednesday, May 11, 1983  
Concerning

CANADIAN NATIONAL RAILWAYS  
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Time claim in favour of Locomotive Engineer N. D. Soldan of Edmonton, Alberta, claiming 126 Miles account deadheading from Edmonton to Edson, June 26, 1982.

JOINT STATEMENT OF ISSUE:

On June 26, 1982, Locomotive Engineer N. D. Soldan was assigned to the Engineer's spareboard at Edmonton.

The regularly assigned Locomotive Engineer on the Edson Sub. work train, which was tied up at Edson, Alberta, advised the Company in accordance with the provisions of Article 64.11 that he had reached his maximum mileage and that he required relief.

Consequently, Locomotive Engineer N. D. Soldan was called to deadhead to Edson to relieve the work train Engineer. For this deadhead tour of duty, Locomotive Engineer Soldan submitted a time claim for 126 miles.

The Company declined payment and the Brotherhood grieved the declination through all steps of the grievance procedure, contending that a violation of Article 67.7, Agreement 1.2 had occurred.

The Company declined the grievance.

FOR THE BROTHERHOOD:

(SGD..) A. JOHN BALL  
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant Vice-President,  
Labour Relations.

There appeared on behalf of the Company:

M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
M. Healey	- System Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Co-ordinator Transportation - Special Projects, CNR, Montreal

And on behalf of the Brotherhood:

A. John Ball                      - General Chairman, BLE, Regina

AWARD OF THE ARBITRATOR

Article 67.7 of the Collective Agreement is as follows:

"67.7    Deadheading in connection with relief work which locomotive engineers have bid in or claimed on seniority basis shall not be paid for, but when not so bid in or claimed and locomotive engineers are ordered by the Company to deadhead any such deadheading shall be paid for, except where locomotive engineers are forced to fill an assignment due to no applications being received".

The grievor was properly called for the relief work in question. It was not work which the grievor had bid in or claimed on a seniority basis, nor was it an assignment he was forced to fill due to no applications being received. The grievor was, under this Article, entitled to payment.

The Company, however, maintains that the case comes within two specific exemptions to the requirement of payment for deadheading. One of these is said to be in Article 67.6, which is as follows:

"67.6    Locomotive engineers deadheading to exercise seniority rights or returning after having done so, or as a result of the application of Article 64 - Mileage Regulations - will not be entitled to compensation therefor."

It is argued that the grievor was deadheading "as a result of the application of Article 64". That Article, however, did not apply to the grievor, but rather to Mr. Steele, the regularly assigned engineer, whose maximum mileage had been reached, and who was relieved pursuant to Article 64. Of course the grievor's being called to Edson was an indirect result of Mr. Steele's being relieved. Some one had to relieve him. Article 67.6, however, addresses itself to cases of engineers whose own deadhead claims are not payable because the deadheading is for the specific purpose of advancing that engineer's own claim to work. While it would appear that Mr. Steele's deadheading would be exempt by virtue of this provision (that question is not before me), I do not consider that its effect is to deprive the grievor of payment in respect of deadheading in service for which he was called in turn.

The other provision which it is argued exempts the Company from payment is Article 64.24, which is as follows:

"64.24    The Company will furnish the necessary cooperation and information to ensure the successful application of these regulations. The Company is not to be put to any additional expense for deadheading or

otherwise by the application of the Article."

It is the Company's position that the payment of the grievor's claim would constitute an additional expense arising out of the application of Article 64. Again, however, it is my view that this provision does not operate to deprive a regularly-called employee from the payment to which is entitled by virtue of what is, for him, the fortuitous circumstance that he was called to relieve an engineer who happened to call for relief pursuant to Article 64, rather than for some other reason. The proviso in Article 64.24 is to be read as relating to claims which might be made by those obtaining the benefit of that Article itself. The grievor was not such, and the Company is not exempted by this provision from making the payment to which the grievor is entitled under the Collective Agreement provisions which apply to him.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL,  
ARBITRATOR.