

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1096

Heard at Montreal, Tuesday, June 14, 1983
Concerning

CANADIAN NATIONAL RAILWAYS
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for difference in pay between passenger brakeman and passenger conductor in favour of Trainman D. G. Claridge on 28 January, 1983.

JOINT STATEMENT OF ISSUE:

On 28 January, 1983 D. G. Claridge was employed as a passenger trainman on VIA Trains No. 74 and No. 81 operating between Windsor and Toronto, Ontario.

The consist of both trains was 4 day coaches and 1 Cafe-Bar Lounge car.

The Union contends that both trains had five working coaches under Article 11.1 and Trainman Claridge should have been used as Assistant Conductor under Article 11.3 (b), Agreement 4.16.

The Company declined the grievance stating that the Cafe-Bar Lounge car was not a working coach.

FOR THE EMPLOYEES:

(SGD.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- Manager Labour Relations, CNR, Montreal
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
D. P. Carmichael	- Asst. General Manager - OBS, VIA Rail, Montreal
J. A. Sebesta	- Coordinator Special Projects Transportation, CNR, Montreal

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
T. G. Hodges	- Secretary, General Committee, UTU, Toronto
R. J. Proulx	- General Chairman, UTU, Quebec
R. T. O'Brien	- Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

Article 11.1 sets out the crew consists required in passenger service. By Article 11.1 (c), where there are four working coaches or less, the crew is to consist of one Conductor and one Brakeman. By Article 11.1 (e), where there are five or more working coaches, there is to be one Conductor, one Assistant Conductor and one Brakeman. On the runs in question, there was one Conductor and one Brakeman (the grievor). The grievor claims that there were five working coaches on those runs, and that he ought to have been paid as an Assistant Conductor.

The four day coaches were "working coaches", and no question arises as to that. The question is whether or not the cafe-bar lounge car was a working coach within the meaning of Article 11. In this regard, paragraph (a) of the Note to Article 11.1 is significant. It is as follows:

"NOTE: in the application of this paragraph:

(a) a working coach is defined as an in-service passenger car which comes under the responsibility of the Conductor for the collection of transportation, limited to the following passenger cars or to other passenger equipment which is designated or placed in service on a tour of duty basis, to perform the function of:

- (i) day coaches;
- (ii) day-nighters;
- (iii) cafe-coach lounge cars; and/or
- (iv) snack coaches."

Regard may also be had to paragraph (c) of the Note, and to Article 11.3:

"(c) Assistant Conductors will work under the direction of Conductors to help with the collection of transportation:"

"11.3 When an Assistant Conductor is required on a tour of duty basis:

(a) for a train operating reduced, a spare employee will be called from the list of qualified Trainmen designated as a relief source for passenger service or from the spare board; and

(b) for a train not operating reduced, the senior qualified Brakeman on the crew for the train on which such a position is required will be used. No replacement will be called for the employee so used as an Assistant Conductor."

While a cafe-bar lounge car is not the same as a cafe-coach lounge

car, it may be that it could perform the function referred to in paragraph (a) of the Note. What is important in that provision is not so much the designation of the equipment as the Conductor's responsibility for the collection of transportation. In the instant case, the Conductor did in fact collect transportation from certain passengers while they were in the cafe-bar lounge car. The transportation collected, however, was for the passengers' day coach accommodation. The cafe-bar lounge car (unlike the cars listed in sub-clauses (i) to (iv) of paragraph (a) of the Note, it would seem), does not include space for which a transportation charge is normally levied. What occurred in this case was simply that the Conductor had to go there to find his coach passengers, to collect the coach transportation. While moving through an extra car would increase the extent of the Conductor's work somewhat, all the fares collected were in respect of transportation on the coaches, of which there were not more than four.

Accordingly, it must be concluded that on the trains in question there were not more than four "working coaches" within the meaning of Article 11, and that an Assistant Conductor was not required. The grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.