CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1142

Heard at Montreal, Wednesday, November 2, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor M. DiCarlantonio and crew, Capreol, Ontario on July 3, 1981 for 129 freight miles.

JOINT STATEMENT OF ISSUE:

Conductor M. DiCarlantonio and crew were called to deadhead Capreol to South Parry with transportation being provided by the Company's crew vehicle.

For this deadhead tour of duty, Conductor DiCarlantonio and crew submitted a time claim for 129 freight miles. The Company disallowed this claim and compensated Conductor DiCarlantonio and crew 150 passenger miles.

The Union contends Conductor DiCarlantonio and crew are entitled to payment of 129 freight miles under Articles 9.1 and 21.2 of former Agreement 4.16.

The Company declined payment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. M. HONE FOR: General Chairman	(SGD.) D. C. FRALEIGH Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
G. C. Blumdell	- System Labour Relations Officer, ?NR, Montreal
M. Healey	- System Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Co-ordinator Transportation - Special Prcjects, CNR, Montreal
J. Letwin	- Service Design Officer, CNR, Montreal
D. M. Randall	- Agreements Assistant, CNR, Montreal

And on behalf of the Union:

T. G. Hodges	- Secretary, General Committee, UTU, Toronto

R. A. Bennett - General Chairman, UTU, Toronto
M. Hone - Vice General Chairman, UTU, Toronto
R. Byrnes - Local Chairman, UTU, Capreol
R. Proulx - Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

This is a claim by Conductor M. DiCarlantonio and crew for payment of 12? miles at "freight rates" when they were called to "deadhead" by Company vehicle from Capreol to South Parry Ontario. At all material times the grievor and crew were performing "freight" services. Upon arrival at their destination they were scheduled to discharge services on a freight train. However, the period that was spent travelling to the location where "freight train" services were scheduled to be performed was paid at passenger rates. The grievors claimed that they should have been paid at the "freight" rate for the time spent travelling and the trade union, on their behalf, relied upon Article 9.1 of the Collective Agreement in support of that claim:

> "Article 9 - Rates of Pay - Freight Service
>
> 9.1 Rates of pay for trainmen on trains propelled by steam or other motive power in through and irregular freight, mixed, work, wreck, construction, circus, wedge snow plow and flanger specials, light engine or engine and caboose, trains established for the exclusive purpose of handling milk or express and all other unclassified service, shall be as follows...." (Emphasis added)

The Collective Agreement specifically establishes a rate of pay for "deadheading" where transportation is provided to the location where work is performed by train. It suffices to say that in those circumstances where transportation is provided by freight and passenger train the appropriate rates are paid based on the train that is used. In this regard, the relevant provisions of Article 21 read as follows:

> "Article 21 - Deadheading
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> 21.2 When deadheading is paid for separately from service, a minimum day at the basic rate applicable to the train on which the man travels will be allowed, unless the actual mileage deadheading is greater, in which event actual mileage deadheaded will be allowed."

The Collective Agreement also indicates that where a trainman is required to be transported from his home base to perform work at a particular destination set out under Article 33.1, he is to be paid, in accordance with Article 33.2, "at the rate of pay...of the service for which ordered at the away from home terminal" for the time

travelling. It is important to note that the route from Capreol to South Parry, Ontario does not appear on the schedule provided under Article 33.1.

Morecver, in several instances the employer and the trade union have negotiated the rates of pay to be paid employees for travelling time to be the rate of the service required "at the away from home destination". Again, in the instant circumstance, no particular rate of pay was agreed to by the employer for the payment of time "deadheading" by Company vehicle from Capreol to South Parry.

Indeed, the Collective Agreement does not specifically address itself to the circumstance where, as in the instant case, employees are required, at the Company's request, to travel by vehicle to the location where a specific train service is intended to be performed. The trade union insists, given the Company's past practice, that it must pay the rate fortheservice performed at the employee's ultimate destination. The underlying rationale of the trade union's submission is the notion that the rate for travelling ought to acquire its value from the type of work that is ultimately discharged by the affected employees. Accordingly, I am urged to find that the time travelled, in the circumstances of this case, is a necessary and integral part of a freight service. Accordingly, the appropriate rate of pay for freight service ought to apply for the period involved in "deadheading".

In my view because the Collective Agreement is silent with respect to the grievors' particular circumstance, it remained a par of management's unilateral prerogative to determine a fair and appropriate rate of pay for the time consumed travelling. Management has determined (and I was told that it had paid the same rate for approximately twenty years) that such appropriate rate ought to be the rate of pay applied for the performance of passenger services. In this regard, in the absence of a provision of the Collective Agreement to the contrary, I have no jurisdiction to review the correctness of that rate.

In replying specifically to the trade union's submission it is perfectly clear that the parties have chosen under the Collective Agreement to differentiate for pay purposes between services performed on freight and passenger trains from work performed in travelling to the ultimate destination where the work is scheduled to be performed (i.e., "deadheading"). Article 21 of the Collective Agreement is a specific example where "deadheading is paid separately from the service". Indeed where the parties have seen fit to combine the specific train service performed with deadheading they expressly addressed that situation, as in the case under Article 33.2, or they negotiated an understanding apart from the Collective Agreement. In no instance have the parties specifically addressed themselves to the situation in which the grievors were required to be transported by Company vehicle to a location where they discharged "freight train" services.

In my view, although it may very well be accurate to describe the grievors travel time to be an integral part of the service performed at their ultimate destination, Article 9.1, to the extent payment is contemplated for "all other unclassified service", is designed to

establish a rate of pay "for trainmen on trains". By the same token, the Collective Agreement, by its scheme, expressly deals with time spent "deadheading" separately and apart from the service that is ultimately performed. And, where the parties have wished the opposite to prevail they have expressly negotiated a specific clause to cover that situation.

In summary, the employer, in the absence of a provision in the Collective Agreement to the contrary, was unilaterally entitled to set a rate of pay for requiring the grievors to be deadheaded by Company vehicle from Capreol to South Parry, Or, more precisely, nothing contained in the Collective Agreement inhibited the employer from establishing the passenger rate of pay as the appropriate rate. For all the foregoing reasons, the grievance is denied.

DAVID H. KATES,
ARBITRATOR.