CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1210

Heard at Montreal, Wednesday, March 7, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Atlantic Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of Article 22, Deadheading, paragraphs (a) and (b) regarding Combination Service.

JOINT STATEMENT OF ISSUE:

Conductor J. G. Poulin and crew submitted a wage claim for 100 miles deadhead service Farnham to Newport on January 26, 1983 and submitted a second wage claim for 114 miles working service Newport to Farnham on January 27, 1983.

By letter dated February 15, 1983, the Company advised Conductor Poulin and crew that their wage claims were being reduced by 84 miles in accordance with Article 22(b).

The Union appealed the Company's action contending that the crew submitted their wage tickets properly under Article 22(a) and (b), Deadheading and Article 11(b), Freight Service, requesting reimbursement of reduced wages.

The Company denied the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. MARCOLINI General Chairman	(SGD.) J. L. FORTIN Acting General Manager, Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers	- Supervisor, Labour Relations, CPR, Montreal
M. G. Chabot	- Assistant Superintendent, CPR, Newport, Vt.
J. H. Blotsky	- Asst. Supervisor, Labour Relations, CPR, Montreal
M. M. Yorston	- Labour Relations Officer, CPR, Montreal
D. A. Lypka	- Asst. Supervisor, Labour Relations, CPR, Winnipeg

And on behalf of the Union:

B. Marcolini	- General Chairman, UTU, Toronto

A. Verner - Vice-General Charrman, UTU, Montreal
R. Proulx - Vice-President, UTU, Ottawa
P. P. Burke - Vice-President, UTU, Calgary
A. Knowlton - Local Chairman, UTU, Farnham

AWARD OF THE ARBITRATOR

In this case the trade union has claimed that Conductor J. G. Poulin and crew are entitled to the minimum rate of not less than eight hours pay for "deadheading" by taxi from Farnham, P.Q. to Newport, Vermont to relieve the regular train crew on that run. In addition it is claimed that the crew is entitled to payment for the run between Newport and Farnham on the basis of 114 miles of working service. The trade union's claim for the minimum eight (8) hour route for "deadheading" is based on Article 22 (a) of the collective agreement:

> "(a) Trainmen required by the Company to deadhead from one terminal to another, irrespective of the manner in which the deadheading is done, shall be paid on the basis of 12.5 miles per hour (and overtime earned if any) at the through freight rate for the actual time occupied. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided in Clause (b) not less than 8 hours will be paid."

The company has claimed, however, that Conductor Poulin and crew were only entitled to the rate of pay for both deadheading and working service on the basis of the compensation provided for combination services under Article 22(b) of the collective agreement which reads as follows:

> "(b) Trainmen required by the Company to deadhead to an intermediate point and going from such point to a terminal in service or going into work train service for the balance of the day, or vice versa, will be paid for the combination deadheading and working service as follows:
>
> When deadheading precedes working service the deadheading payment will be continuous from time ordered for until working service actually begins; when deadheading follows working service, payment for working service will continue until deadheading commences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate applicable in the combination will be allowed. For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day."

There is no dispute that Conductor Poulin and crew were deadheaded by taxi to Newport, Vermont from Farnham, P.Q. (less than 100 miles distance) and were immediately pressed into working service. The crew then completed the regular run from Newport to Farnham. The

point at which the regular assigned crew was relieved at Newport was referred to as the mid-point or turnaround point of the regular run.

It is the trade union's position that the points between Farnham, P.Q. and Newport, Vermont, are both "terminals". Since the "deadheading" that took place was between two "terminals" the employer was obliged to pay the minimum rate of eight hours pay as prescribed by Article 22 (a).

The employer insisted however that Newport for purposes of the run to which Conductor Poulin and crew provided relief services represented an intermediate point in that run. Since the "objective" point of the deadhead was an intermediate point after which the crew was pressed into service, compensation on the basis of the combination service of deadheading and working service as prescribed by Article 22 (b) applied.

In a precedent under the predecessor tribunal to the CROA this very issue was resolved (albeit "with some doubt") by Professor Bora Laskin (as he then was) in the following terms:

> "...There need be no resort to other articles to give Article 22 (a) a sensible application. I conceive it then as covering deadheading from one terminal to another; deadheading from a terminal to some intermediate point and then to another terminal in work service, and deadheading and work service in turnaround between terminals. It flows from this vien that the claims of the Brotherhood must be denied."

The trade union has adduced no argument to cause me to depart from this past precedent. I have no difficulty in accepting as sound the general principle that a particular point in a run acquires its character for pay purposes from the nature of the run. Accordingly, since Newport (albeit a terminal for some other purposes) was the turnaround point for the run in question it, was thereby an intermediate point in that particular run. Because Conductor J. G. Poulin and crew combined both deadheading and work service simultaneously in the performance of their duties their wage claim was thereby governed squarely by Article 22(b) of the collective agreement.

It is clear in my own mind that the trade union's concern about the restricted application of Article 22(a) is attributable to the fact that it is a rare circumstance that "deadheading" would be required for the purpose of completing a run between two "terminals" that are less than 100 miles apart. Rather, in most circumstances where deadheading is required of less than 100 miles it is in order to reach an intermediate point in the run for which relief services are required. Thus where a "turnaround" point happens to be the intermediate point in a run I can see no reason why Article 22(b) ought not to be invoked for the payment of the combination deadheading and work services that are performed.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.