CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1257

Heard in Montreal, Thursday, June 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Six time claims for 600 miles in favour of Locomotive Engineers B. 0. Nomland and D. J. Spivak of Vancouver, B.C. account deadheading Coquitlam to Roberts Bank and return on June 29th, 30th and July 2nd, 1983. Engineer Nomland - 4 claims for 100 miles each June 29th and 30th, July 2nd, 1983. Engineer D. J. Spivak - 2 claims on June 30, 1983.

JOINT STATEMENT OF ISSUE:

On each occasion, Locomotive Engineers Nomland and Spivak were assigned to the Engineer's Spareboard at Coquitlam. Messrs Hayes and Bradburn were regularly assigned engineers in the Roberts Bank pool and advised the Company that they had reached their maximum mileage in accordance with the provisions of Article 29, Mileage Regulations.

Consequently, Locomotive Engineers Nomland and Spivak were called from Coquitlam spareboard to deadhead to Roberts Bank to relieve Messrs Hayes and Bradburn in their Roberts Bank pool turns. For these deadhead tours of duty, Locomotive Engineers Nomland and Spivak submitted time claims for 100 miles on each occasion.

The Company declined payment, and the Union grieved the declination through all steps of the grievance procedure.

The Company declined the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) L. F. BERINI	(SGD.) L. A. HILL
General Chairman	General Manager

There appeared on behalf of the Company:

F. Shreenan	- Supervisor, Labour Relations, CPR, Vancouver
D. McFarlane	- Asst. Supervisor, Labour Relations, CPR, Vancouver
B. P. Scott	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

L. F. Berini	- General Chairman, BLE, Calgary

J. W. Konkin - General Chairman, BLE, Winnipeg
P. M. Mandziak - General Chairman, BLE, St. Thomas
G. N. Wynne - General Chairman, BLE, Montreal
G. Thibodeau - General Chairman, BLE, Quebec

AWARD OF THE ARBITRATOR

The grievors, Mr. B. 0. Nomland and Mr. D. J. Spivak, claim the deadheading allowance for relief work provided off the Coquitlam spareboard at Roberts Bank. The circumstances that gave rise to the "deadheading" was because the regular assigned engineers, Messrs Hayes and Bradburn, had reached their maximum mileage in accordance with the provisions of Article 29, Mileage Regulations. The company claims that the deadheading allowance does not apply to the grievors' situation by reason of the fact that it arises as a result of the exhaustion of the maximum mileage of the regular assigned crew. Accordingly the following provisions of the collective agreement are alleged to exempt the company from paying the grievors' claims:

> "Article 29 (k) The Company is not to be put to any additional expense for deadheading or otherwise by the application of this Article."
>
> "Article 5 (b) (7) Engineer will not be entitled to claim deadheading . . . in the application of Article 29. . .".

The trade union relies on the CROA Case #1092 for the propositon that, on a similarly worded provision contained in the CNR Agreement,the restrictions contained in Articles 29 (k) and 5 (b) (7) with respect to the deadheading allowance only apply to the regularly assigned engineers who have exhausted their maximum mileage. In this case Messrs Hayes and Bradburn. It does not apply to the employees called off the spareboard to provide relief services. Accordingly, the relevant portion of CROA Case #1092 reads as follows:

> "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 circumstances 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 of 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."

Notwithstanding the company's submissions I can discern no difference in the facts adduced before me from the circumstances that confronted the Arbitrator in CROA Case #1092. Indeed, the decision of the

Arbitrator, if not correct, is certainly an interpretation that the language of the collective agreement can reasonably bear. I cannot conclude that that interpretation, as argued by the company,was "wrong".

Accordingly, I ascribe as my own the interpretation of CROA Case #1092 to the facts adduced herein. As a result the grievors are entitled to payment of the deadheading allowance as prescribed under Article 5 (b) (1) and (4) of the collective agreement. I shall remain seized for the purpose of implementation.

DAVID H. KATES,
ARBITRATOR.