CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1260

Heard at Montreal, Thursday, June 14, 1984
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of Conductor N. R. Wilson and crew, Toronto, 28 July 1982, for 100 miles at through freight rate of pay.

JOINT STATEMENT OF ISSUE:

On 28 July 1982, Conductor N. R. Wilson, Brakeman K. J. Burns and D. W. Beattie were ordered to deadhead from MacMillan Yard to Barrie for Work Train Service commencing and terminating at Barrie.

Conductor Wilson and crew submitted claims for 100 miles at freight rate of pay for deadheading MacMillan Yard to Barrie and an additional 100 miles at freight rate of pay for the return deadhead from Barrie to MacMillan Yard.

The Company disallowed these claims and compensated Conductor Wilson and crew 3 hours in each direction at through freight rates of pay in accordance with the Letter of Understanding dated December 17, 1979.

The Union contends that the Letter of Understanding dated December 17, 1979, does not apply as the work performed was not within the confines of Barrie and Conductor Wilson and crew are entitled to payment under Article 21.2 (now Article 17.2) of Agreement 4.16.

The Company declined payment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. A. BENNETT General Chairman	(SGD.) D. C. FRALEIGH Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

J. A. Bart	- Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation - Special Projects, CNR, Montreal
W. P. Byers	- Assistant Superintendent, CNR, Sarnia

And on behalf of the Union:

T. G. Hodges - Vice-General Chairman, UTU, Toronto
R. A. Bennett - General Chairman, UTU, Toronto

AWARD OF THE ARBITRATOR

The grievors, Conductor W. R. Wilson and crew, claim the deadheading allowance of eight (8) hours for being called off the Toronto spareboard to provide relief services on the Barrie to Meaford run in accordance with Article 21.2 (now Article 17.2) of Agreement 4.16. The company claims that the grievors' entitlement is for the deadheading allowance of three hours in accordance with Item 1 (b) of the Letter of Agreement dated December 17, 1979, which reads as follows:

> "Sparemen ordered from home terminal Toronto to perform work at Barrie, Ontario will be allowed three (3) hours in each direction at the rate of service for which ordered, as compensation for deadheading."

The Barrie to Meaford run commences at Barrie and ends at Barrie. The grievors reported to work at Barrie and booked out at Barrie. The company, accordingly, insists that the road service run between Barrie and Meaford pertains to "the performance of work at Barrie". Therefore, it is submitted Item 1 (b) of the Letter of Agreement governs the grievors' claims to the deadheading allowance.

The trade union insists that the term "the performance of work in Barrie" should be restricted to the "proximity", or the confines of Barrie. It was alleged that Item 1 (b) was a direct result of "the material change" provisions of the collective agreement and was not intended to have any relevance in governing "deadheading" from the Toronto spareboard to provide relief for runs out of Barrie.

The fallacy in the trade union's argument was evidenced by its own admission. Employees who formerly worked off the spareboard in Barrie to provide relief for regular crews before the material change was effected are now terminalled in Toronto and provide the same relief service off the Toronto spareboard. Accordingly, it is patently obvious that those employees were intended because of the material change to be governed by Item 1 (b) of the Letter of Agreement. In short, I am satisfied it was the clear intention that employees who were assigned to relieve regular crews off the Toronto spareboard on runs out of Barrie were to be governed, for deadheading purposes, by Item 1 (b). Such employees clearly are "performing work at Barrie".

Accordingly the grievance is denied.

DAVID H. KATES,
ARBITRATOR.