CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1302

Heard at Montreal, Wednesday, November 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Trainman D. B. Fode, Medicine Hat, for 100 miles each for deadheading between Medicine Hat and Swift Current on May 31 and June 3, 1983 respectively, to relieve a Trainman off as a result of mileage regulations.

JOINT STATEMENT OF ISSUE:

Trainman Fode is assigned to the spareboard at Medicine Hat. This is the only point on the Division where a spareboard is maintained. All spare work for any point on this territory is dispersed from that spareboard. Spareboards operate on a first-in first-out basis in accordance with the provisions of Article 14, Clause (a). On May 31, 1983 Trainman D. B. Fode was first out on the spareboard when it became necessary to deadhead a Brakeman to relieve Brakeman Owens at Swift Current. Mr. Owens was, in turn, relieving Conductor P. Becker who was off on mileage regulations. Trainman Fode submitted claims for 100 miles for deadheading from Medicine Hat to Swift Current on May 31 to relieve Brakeman Owens and a claim for 100 miles Swift Current to Medicine Hat at the expiration of the relief work. These tickets for deadheading were declined by the Company.

The Company contends that payment is not justified as Article 16, Clause (d) and Article 22, Clause (e) (3) excludes payment for deadheading asa result of the application of Article 16.

The Union contends that Trainman D. B. Fode was required to deadhead in this instance as a result of having been first out in accordance with the provisions of Article 14, Clause (a) and is therefore entitled to deadheading payment.

FOR THE UNION:

(SGD.) J. H. McLEOD
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager,
Operation and Maintenance.

There appeared on behalf of the Company:

F. R. Shreenan - Supervisor, Labour Relations, CPR, Vancouver
J. T. Sparrow - Manager, Labour Rhlations, CPR, Montreal
B. P. Scott - Labour Relations Officer, CPR, Montreal
D. N. McFarlane - Asst. Supervisor, Labour Relations, CPR,

Vancouver

And on behalf of the Union:

J. H. McLeod - General Chairman, UTU, Calgary
P. P. Burke - Vice-President, UTU, Calgary

AWARD OF THE ARBITRATOR

Trainman D. B. Fode was called off the spareboard at Medicine Hat to relieve a trainman who had reached at Swift Current his maximum mileage under the mileage regulations. His claim is for the deadheading allowance for the trip between Medicine Hat and Swift Current (return) in accordance with Article 22, Clause (a) of the collective agreement.

> "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 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) of this Article, not less than eight hours will be paid; overtime pro rata."

The company claims it is exempt from payment of the deadheading allo?ance in having regard to the specific provisions of the collective agreement excluding such entitlement to employees in the circumstances described herein. Those provisions read as follows:

> "16(d) It is understood and agreed the operation of mileage limitations and regulations will not involve any increased cost to the Company. Any deadheading necessary in the application of these regulations or as a result thereof will not be paid for."
>
> "22(e) Trainman will not be entitled to payment for deadheading under the following circumstances:
>
> (3) to comply with Article 16 (d).
>
> When deadheading in the application of the regulations governing Mileage Limitation in Article 16, or as a result thereof."

The company submits that the phrase "or as a result thereof" in both Articles 16(d) and 22(e) of the collective agreement distinguishes the circumstances of this case from the similar situations described in CROA Cases 1092 and 1257 where the relevant collective agreements apparently did not contain like language. It is important to stress

that the interpretation conferred by the Arbitrators to the exempting provisions of the collective agreement in those cases restricted the exclusion of the deadheading allowance to the Locomotive Engineers who had achieved maximum mileage. Those provisions were not interpreted to apply to the spareboard employees who provided relief services.

It continues to remain my opinion that the interpretation conferred in those cases, if not correct, represent a reasonable application of the language of the collective agreement. Moreover, the additional words contained in Articles 16(d) and 22(e) (or as a result thereof,) do not add any further substance to the legitimacy of the company's interpretation of those provisions. Quite clearly, a reasonable interpretation of the exempting provisions anticipates that the employee who has achieved his maximum mileage should not benefit from the deadheading allowance. However, the employee who at any given time may be called off the spareboard to provide relief services on a first in first out basis wherever his services are required should be entitled to that allowance. Or, at least, there is nothing in the language of the collective agreement that clearly deprives him of that entitlement.

It may very well be that the company's all encompassing approach to the exempting provisions also represents an interpretation that the language may reasonably bear. But even if this be the case, it appears that a canon of contractual construction dictates that where a provisions of an agreement confers a general benefit or entitlement any provision that restricts the application of that benefit or entitlement should be very narrowly construed. Otherwise, the general intention of the parties in conferring the benefit or entitlement might very well be defeated.

In other words, Article 22 (e)confers the general benefit of a deadheading allowance. In my view the exempting provisions that purport to limit or exclude that entitlement should be given a very restrictive interpretation. Otherwise the general intention of the parties to provide employees with a deadheading allowance may very well be rendered ineffectual.

Thus when confronted with two interpretation of Articles 16 (d) and 22(e), which may both be reasonable, an Arbitrator is duty bound to select the interpretation that best gives effect to the general entitlement as the more reasonable interpretation.

For all the foregoing reasons the employer is directed to comply with Article 22 (a) and pay the grievor his claim as requested for the deadheading allowance. I shall remain seized for the purpose of implementation.

DAVID H. KATES,
ARBITRATOR.