CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1851

Heard at Montreal, Thursday, 10 November 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor A. O. Stevens and crew, Sarnia, dated 10 January 1988 alleging violation of Article 51.7 of Agreement 4.16.

JOINT STATEMENT OF ISSUE:

On 10 January 1988, Conductor A. O. Stevens and crew were ordered for Train 392, Sarnia to MacMillan Yard with an on duty time of 1330. Train 392 departed Sarnia at 1615 and proceeded east to mileage 54 of the Strathroy Subdivision at which point the train was stopped due to train air brake problems. Conductor Stevens and crew had provided earlier notice to the train dispatcher that they would require rest after 11 hours on duty under the provisions of their Collective Agreement. Train 392 returned to Sarnia and Conductor Stevens and crew were released from duty.

The Union contends that, pursuant to Article 51 of Agreement 4.16, Conductor Stevens and crew were entitled to payment of all road miles from Sarnia to MacMillan Yard and return.

The Company disagrees with the Union's contention.

FOR THE UNION:	FOR THE COMPANY:
(Sgd) T. G. HODGES General Chairman	(SGD) M. DELGRECO for: Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

J. B. Bart	- Manager, Labour Relations, Montreal
D. Lussier	- Co-Ordinator, Transportation, Montreal

And on behalf of the Union:

T. G. Hodges	- General Chairman, St. Catharines
R. A. Bennett	- Legislative Director, Ottawa

AWARD OF THE ARBITRATOR

The grievance turns on the interpretation of Article 51.7 which provides, in part, as follows:

51.7(a) When rest is booked en route, trainmen will, at the Company's option:

(i) be relieved of duty and provided with accommodations either in a Company facility or an available hotel or motel; or

(ii) be replaced and deadheaded immediately either to the point for which ordered or to the home terminal where they will be relieved of duty.

NOTE (1): When deadheaded in the application of sub-paragraph 51.7 (a)(ii), trainmen will be compensated on a continuous time basis for service and deadheading (mile or hours whichever is the greater) as per class of service.

NOTE (2): In the application of sub-paragraph 51.7(a)(ii), trainmen who are returned to the home terminal after being replaced on a trip to the away-from-home terminal will be paid, in addition to the earnings specified in Note (1) above, the additional actual road miles they would have otherwise earned for the round trip had they not been replaced.

(b) Except in circumstances beyond the Company's control, such as accident, impassable track, equipment malfunction, plant failure, etc., trainmen will be relieved of duty by the time rest booked is due to commence.

The Union submits that the foregoing provision was negotiated with the intention that it should apply in the circumstances of the instant case. Its representative draws to the Arbitrator's attention the result in CROA 1317 where it was found that employees in almost identical circumstances were limited in the earnings they could claim by the terms of Article 6.5 of the Collective Agreement, that is to say that they were entitled to the payment of one hundred miles, but not to the constructive miles which they would have trav-elled if their run had not been cancelled.

The Canada Labour Code defines a collective agreement, in part, as an agreement in writing. (See Canada Labour Code R.S.C. Chapter L-1, S. 26.) The statutory requirement that the terms of a collective agreement be in writing reflects the long-standing reali-ty, which is at the very root of the arbitration system, that it is possible, and indeed likely, that the parties negotiating the terms of a collective agreement may not have precisely the same view of the purpose or application of the provsisions which they fashion. It is for this reason that the law requires that collective agreements be in a written form. It is also why boards of arbitration must take as their point of departure the words of the parties' contract in resolving grievances relating to the terms of a collective agreement. It is not uncommon for arbitrators to conclude that the parties to a negotiation may have had a very different intention in expressing their agreement to a particular provision in a collective agreement. It is for this reason that arbitrators sometimes refer to the

"intention of the collective agreement" rather than the intention of the parties. That approach is, moreover, essential to the collective bargaining process. It limits the possibility of the parties calling volumes of self-serving evidence to support their understanding of the intention of a particular provision while, on the other hand, it forces the negotiators in the collective bargain-ing process to apply themselves in a thorough and articulate way in drafting the precise terms of their collective agreement.

While I am not without sympathy for the motives that underlie the Union's grievance in the instant case, I am nevertheless bound by the principles of interpretation which all parties to collective agreements must be taken to know will be applied by a board of arbitration in the construction of their document. Insofar as the instant grievance is concerned, I cannot find any ambiguity in the terms of Article 51.7(a)(ii) and NOTE(2) which are relied on by the Union in support of this claim. A clear condition precedent to the payment of a claim under NOTE(2) is that the trainmen be "replaced and deadheaded ... to the home terminal". In its brief the Union draws the Arbitrator's attention to the Company's own definition of deadheading, which it does not dispute. That definition states, in part:

> When deadheading the employee is performing no productive service in respect of train operation nor is the employee charged with any responsibility for the operation of a train.

The foregoing definition clearly could not apply to the employees on whose behalf this grievance is filed. It is common ground that upon the discovery of the mechanical difficulty which impeded the progress of Train 392 the grievors operated their train in its return to Sarnia where they were released from duty. In these circumstances I cannot find that the conditions necessary to the application of Article 51.7 are made out. If it is the view of the Union that that result works undue hardship on its members, in light of the present wording of the article, that must be a matter for future negotiation.

An alternative submission advanced by the Union is that on at least two occasions Company officers have interpreted the terms of Article 51.7 in a manner consistent with the Union's claim. Firstly, because I am satisfied that terms of the provision are clear and unambiguous, it does not appear to me to be appropriate to resort to extrinsic evidence of that kind. Alternatively, given that Article 51.7 represents a new provision negotiated only in 1986, the weight to be given to two single incidents of interpretation by Company officers in two locations falls far short of establishing a consis-tent past practice that can be said to reflect an agreed intention, or a course of conduct that would ground an estoppel.

For the foregoing reasons the grievance must be dismissed.

November 10, 1988 (Sgd.) MICHEL G. PICHER
ARBITRATOR