

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2660

Heard in Montreal, Tuesday, October 10, 1995

concerning

Ontario Northland Railway

and

United Transportation Union

DISPUTE:

A claim for Motor Coach Operators, Mr. B. Boyd, Mr. T. Elzinga and Mr. E. Leclair for the payment of wages for deadheading.

JOINT STATEMENT OF ISSUE:

On July 10, 1993, Mr. Boyd, Mr. Elzinga and Mr. Leclair were dispatched from the North Bay terminal on charter trips to take groups from Sudbury to Lake Geneva and return to North Bay.

The Union contends that these Motor Coach Operators are each entitled to four hours pay under article 12.1 for deadheading, when they drove their empty buses between North Bay and Sudbury.

The Company maintains the position that these Motor Coach Operators were properly compensated in accordance with article 10 and denied the Union's request.

FOR THE UNION:      FOR THE COMPANY:

(SGD.) K. L. Marshall (SGD.) K. J. Wallace

General Chairman President

There appeared on behalf of the Company:

M. J. Restoule - Manager, Labour Relations, North Bay

J. L. Thib - Superintendent, Train Operations, Englehart

D. Rochon - Chief Dispatcher, North Bay

And on behalf of the Union:

K. L. Marshall - General Chairperson, North Bay

Wm. Ross - Acting Local Chairperson, North Bay

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not in dispute. The three grievors, who are based at North Bay, were assigned to drive an empty bus from North Bay to Sudbury. At that location they collected passengers for a charter trip from Sudbury to Lake Geneva, a location approximately one hour north of Sudbury. Lake Geneva is a provincial park where the charter passengers spent leisure time during the course of the day. At the conclusion of the day the grievors drove their passengers to Sudbury and then returned from Sudbury to North Bay. It appears that in the case of Mr. Boyd, he in fact returned from Sudbury to North Bay in a different bus than that which he utilized for the charter.

The grievance relates to the claim of the three employees for payment of 192 kilometres, or four hours' deadheading, in accordance with article 12 of the collective agreement which provides as follows:

INDENT 12.1 Operators ordered to deadhead shall be allowed actual travelling time, but no allowance shall be made when deadheading as the result of seniority rules.

INDENT 12.2 Operators ordered to deadhead and required to stay overnight away from home will be allowed actual on duty time with a minimum of 4 hours' pay. No allowance shall be made when deadheading as a result of seniority rules.

Deadheading shall be defined as travelling as a passenger on public transportation or driving an empty bus.

The Company submits that article 12 has no application to the work performed by the grievors. It maintains that they were

properly paid under article 10 of the collective agreement which governs special trips and charter buses. Specifically, it asserts the application of article 10.1(c) which reads as follows:

INDENT 10.1 (c) For charters and tour trips, when operators are required to provide service to customers intermittently during any day over a spread of hours in excess of ten, they shall be allowed a maximum of ten hours' pay for all service rendered on such days except that all driving time will be paid for. (Meals, coffee breaks, reporting time and final time will be included as driving time.)

The Company submits that article 10.1(c) was specifically negotiated into the collective agreement in May of 1987, partly as a result of an initiative on the part of the Union to accept a maximum pay period of ten hours on charter days which involve intermittent service. If, for example, a charter driver were to take a group to a given location at a distance of two hours' drive, remain idle for a period of eight hours while the charter passengers engage in some activity, and then return them at the end of the day with a further drive of two hours, the employee in question could only claim a maximum of ten hours' pay. This, it seems, was negotiated with a view to restoring the competitiveness of the Company in charter markets.

The position of the Company is that the grievors were properly paid under the terms of article 10.1(c), for all of the time which they spent from their departure from North Bay, until their return to that location, and that their service was at all times payable under the special trip and charter trip provisions of article 10. The Union, on the other hand, submits that the charters in question must be considered to have been Sudbury charters, stressing that if Sudbury based employees had been assigned to perform the same work, without involving the drive to and from North Bay (an additional two hours) they would nevertheless have been paid the same amount as the North Bay drivers. The Union submits that that cannot have been the intention of the collective agreement, and its representatives stress that the provisions of article 10.1(c) were never intended to have so broad an application as the Company purports to give them in the case at hand.

It does not appear disputed that in almost every instance of charter service a driver will be required to drive an empty bus, at least some distance. The parties appear to agree that driving an empty bus in charter service will not in all cases involve deadheading. For example, in response to a hypothetical discussed, it seemed agreed that a driver dispatched from North Bay to Sturgeon Falls to pick up a charter group for travel to Midland, Ontario, returning the passengers to Sturgeon Falls, thereafter returning the bus to North Bay, could properly be payable under the terms of article 10.1(c), and that the travel between North Bay and Sturgeon Falls would not be compensated as deadheading.

In the Arbitrator's view this grievance must be resolved on its own particular facts, and the award should avoid undue generalizations. It is significant, I think, that the Company does have Sudbury based drivers who, if assigned to the same charter as that performed by the grievors, would have been paid at the same rate for a substantially shorter day. Further, in at least one instance a driver was given an altogether different bus

to return from Sudbury to North Bay at the conclusion of his day's work. In these circumstances, limited to the facts at hand, I am satisfied that the travel performed by the employees between North Bay and Sudbury can fairly be said to fall outside the purview of intermittent charter service intended to be protected by article 10.1(c) of the collective agreement, and that they can fairly be said to have been deadheading both as regards their travel from North Bay to Sudbury and their travel back to North Bay from Sudbury on the day in question. In the result, I must conclude that the claims are properly made, and that the grievances must succeed. The Arbitrator therefore directs that the grievors be compensated at the further rate of 192 kilometres or four hours for deadheading, in accordance with article 12.1

October 13, 1995 (signed) MICHEL G. PICHER

ARBITRATOR