CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2829

Heard in Montreal, Thursday, 13 February 1997

concerning

CANADIAN PACIFIC LIMITED
[ST. LAWRENCE & HUDSON RAILWAY COMPANY]

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

The disputed portion of the wage claim submitted by Locomotive Engineer P. Coffey, Toronto, Ontario, for 123 miles deadheading.

JOINT STATEMENT OF ISSUE:

The grievance involves the Belleville Run Through Agreement signed October 29, 1969 and article 5(B)(5), Straightaway Deadheading.

Terms and conditions of the Belleville Run Through Agreement entitles the grievor to 223 miles deadheading.

The collective agreement under article 5(B)(5) entitles the grievor to 100 miles deadheading.

It is the contention of the Council that the Belleville Run Through Agreement is still in effect and the claim for 223 miles deadheading should be paid accordingly.

The Company contends that the recent collective agreement altered the deadheading provisions paid to running trades employees with no exceptions made for deadhead service in the Belleville Run Through Pool for locomotive engineers.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) R. S. MCKENNA	**(SGD.) G. CHEHOWY**
GENERAL CHAIRMAN	**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, StL&H, Toronto
R. M. Andrews	– Labour Relations Officer, Calgary
M. K. Couse	– Algoma District Coordinator, Calgary

And on behalf of the Council:

R. S. McKenna	– General Chairman, Barrie
D. A. Warren	– General Chairman, UTU, Toronto
D. Stefurak	– Local Chairman, Schreiber
R. Hewitt	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The first issue to be resolved in this dispute is whether the decision of Mr. Justice Adams, dated June 14, 1995, should be construed as having effectively overruled the Belleville run-through agreement of October 29, 1969. Following the Adams Award, article 5(b)(5) of the collective agreement was amended to provide as follows:

> **5(b) (5)** Locomotive Engineers and Trainpersons 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 (and overtime earned if any) at the through freight rate. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided below, not less than 8 hours to be paid.

In the Arbitrator's view, in considering whether the Adams Award should be taken as having dealt with the Belleville run-through agreement, careful regard should be had to the submissions made to the Mediation-Arbitration Commission chaired by Mr. Justice Adams. As is evident from the material before me, the Council made it part of its submission to attempt to protect the Belleville run-through agreement. In drafting proposed language for the Adams Commission the Council made the following submission, in part:

> In the course of discussions in respect of the amended deadheading provisions of the collective agreement as proposed in this Tab 10 to the counsel's [sic] written submissions on all outstanding issues, it is agreed that the Belleville Run Through Agreement is excepted from this proposal.
>
> The Belleville Run Through Agreement has been in effect since 1972, resultant from an award from the arbitrator which outlined the terms and conditions for this extended run. The run is a 200 mile run, between Toronto and Smiths Falls, which involves the equalization of crews because of the involvement of two home terminals.
>
> For these reasons, the Belleville Run Through Agreement will be excluded from the amendments to the deadheading provisions and the present situation as it applies to actual miles run will apply when crews are deadheaded.

It should be stressed that although the above language speaks in terms of agreement, no such agreement was reached in negotiations prior to the mediation-arbitration process, nor during the course of submissions to Mr. Justice Adams. What appears above, therefore, is simply the Council's proposal to protect the Belleville run-through agreement.

The Company's position before the Commission contains nothing which can be construed as a proposal to retain the Belleville run-through agreement, in whole or in part. Rather, the Company opted for an across-the-board tightening and standardizing of deadheading provisions, to be paid on the minute basis. Its submission to Mr. Justice Adams contains, in part, the following:

> The Council proposal is unacceptable by any standard. To reiterate, the Company requires deadheading on the minute basis with no minimum payment, removal of the 100 mile terminal and the 10 hour on duty restriction with respect to combination turnaround service, a unified trainperson/locomotive engineer combination straightaway service rule and a relaxation of an employees [sic] unrestricted right to book rest upon arriving at a terminal in deadhead service.

The Belleville run-through agreement contained the following provisions with respect to deadheading:

> **9.** When required by the Company to deadhead between Smiths Falls and Toronto, payment shall be as follows:
>
> **(a)** for engineers on the Ontario District seniority list and those holding promotion rights to engineers on the signatory date of this agreement, the mileage to be paid when deadheading on freight trains will be 203 at minimum freight rates;
>
> **(b)** for engineers not on the Ontario District seniority list or not holding promotion rights to engineers on the signatory date of this agreement, mileage to be paid in deadheading on freight trains will be 196;

(c) when deadheading is authorized on Canadian National passenger trains, the mileage paid for such deadheading will be 223;

(d) except as provided in (a) above, payment for respective methods of deadheading will be in accordance with the application of article 5 of the collective agreement.

It appears to the Arbitrator that much of the purpose of the foregoing provision was to give a form of grandfathering protection to certain employees. It does not appear disputed that those who held such protections have by now retired or otherwise left the service of the Company. Most significantly, in my view, the issue of the ongoing status of the Belleville run-through agreement was squarely put to the Adams Mediation-Arbitration Commission. That is clear from the content of the Council's own proposals and the very contrary tenor of the Company's reply, in submission to Mr. Justice Adams. In the circumstances I am compelled to conclude that the Commissioners must be taken to have considered and rejected the proposal advanced by the Council with respect to the continuation of the Belleville run-through agreement. Indeed, at page 92 of the award, when reviewing the Council's submissions, the Commissioners make direct reference to a study of deadheading on the Belleville Subdivision. There is, however, nothing in the award of the Commission, appearing at page 95 of its decision, to suggest that it intended any continuation or protection of the Belleville run-through agreement provisions concerning deadheading. In the circumstances, I am compelled to conclude that the Commission effectively rejected the proposal advanced by the Council concerning the continuation of the deadheading provisions of the Belleville run-through agreement. When the process is examined as a whole, it appears clear that the Commission was compelled to consider the issue, as it was squarely put in the proposal formulated by the Council. To the extent that that proposal was not incorporated into the Commissioner's award, I have no alternative but to conclude that, implicitly, the Commission opted against the continuation of the deadheading provisions of the Belleville run-through agreement.

For the foregoing reasons the Arbitrator cannot sustain the claim of Locomotive Engineer Coffey to be paid for deadheading on the basis of the Belleville run-through agreement. The payment of the grievor's claim in a manner consistent with the provisions of article 5(b)(5) of the collective agreement, implemented by the Company, is correct in the circumstances. For these reasons the grievance must be dismissed.

February 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR