CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3254

Heard in Calgary, Tuesday, 14 May 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

EX PARTE

DISPUTE – COUNCIL:

The proper application of article 65, par. 65.3, in relation to the manner in which compensation is set out in article 9 of collective agreement no. 1.

DISPUTE – COMPANY:

Whether or not the provisions of article 9 of agreement 1.2 apply when combined service and deadheading involve a turnaround point.

COUNCIL'S STATEMENT OF ISSUE:

Locomotive Engineer Nykoluk was called in turnaround service on train 776, Jasper to Dalehurst and return to Jasper, on July 7, 1998. At Dalehurst, the turnaround point, he was instructed to set his train out and return to Jasper by taxi cab.

The grievor submitted a time claim(s) for one hundred (100) miles from Jasper to Dalehurst and actual miles from Dalehurst to Jasper, which was subsequently altered by the Company.

It is the Brotherhood's position that Mr. Nykoluk was entitled to claim payment for a short run, as outlined in article 9.3, as a result of the Company requiring the grievor to taxi back to Jasper for the return portion of his tour of duty.

The Brotherhood contends that article 65, par. 65.3 applies, that would in turn trigger the payment that is found within paragraph 9.3 of article 9.

The Company disagrees.

COMPANY'S STATEMENT OF ISSUE:

Mr. Nykoluk was called in turnaround service Jasper to Jasper via Dalehurst on July 7, 1998. During his tour of duty he was advised to set out his train at Dalehurst and deadhead home.

It is the Brotherhood's position that Mr. Nykoluk is entitled to claim payment for a short run as outlined in article 9.3 as a result of the Company requiring Mr. Nykoluk to deadhead for the return portion of his tour of duty. The Brotherhood cites article 65.3.

It is the Company's position that article 67.4 of agreement 1.2 applies in the instant case and therefore declines the Brotherhood's claim.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) D. E. BRUMMUND	(SGD.) S. BLACKMORE
FOR: GENERAL CHAIRMAN	FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

S. Blackmore	– Manager, Human Resources, Edmonton
J. Torchia	– Director, Labour Relations, Edmonton
R. Reny	– Manager, Human Resources, Vancouver

And on behalf of the Council:

D. E. Brummund	– Senior Vice-General Chairman, Edmonton
R. J. Ermet	– Local Chairman, Jasper
R. Allen	– Local Chairman, Biggar

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that when the claim which is the subject of this grievance was initially made by Locomotive Engineer Nykoluk for turnaround service on train 776 on July 7, 1998 the parties were disagreed as to his entitlement to payment. The record before the Arbitrator establishes, however, that following discussions between officers of the Company and the Council a written settlement of the grievance was executed on October 6, 1999. The terms of settlement read, in part, as follows:

> As Locomotive Engineer Nykoluk was called in turnaround service and not in combination service in accordance with Article 65.3, nor was his call changed due to circumstances which could not be foreseen at the time of his call, the Company will place his claim in line for payment as full and final settlement of this dispute.

The unchallenged representation of the Council is that following the settlement of the Nykoluk claim the Company instituted a pay systems adjustment, following a pay systems bulletin to locomotive engineers advising them how they should make their claim for the assignment Jasper to Jasper via Dalehurst. It appears that the settlement and the adjusted payroll policy remained in effect until January 10, 2001 when the Manager, Pay Systems, Mr. B.G. Cromp issued a new bulletin essentially reversing the content of the settlement referred to above.

The Company's representative submits that it was simply her error in understanding the provisions of the collective agreement which lead to the settlement. On that basis

she submits that the Company should not be bound by the settlement which it made with the Council. The Arbitrator cannot agree. It is well settled, and essential to stability in labour relations, that when parties settle a grievance, and do so in terms which indicate that they intend a general application of their settlement for the term of their collective agreement, a board of arbitration is bound to respect and enforce the settlement so reached. (See **Re Molson's Brewery (Ontario) Ltd. and United Brewery Workers, Local 301** (1984), 15 L.A.C. (3d) 128 (Beck); **Re Sudbury Roman Catholic Separate School Board and O.E.C.T.A.** (1997), 61 L.A.C. (4th) 223 (Kaplan); **Re Province of Manitoba and Manitoba Government Employees Union** (1997), 68 L.A.C. (4th) 321 (Freedman).)

When regard is had to all of the evidence in the instant case it is clear that parties reached a settlement, reduced their agreement to writing and clearly intended the settlement to have a more general application beyond the initial claim made by Locomotive Engineer Nykoluk in July of 1998. That is evident by the administrative adjustments put in place by the Company and apparently maintained in practice for a period of more than one year. It is obviously essential to a rational and stable labour relations system for either side to rely upon a settlement made by an officer who has the ostensible authority to bind either the Company or the Council in a matter of collective agreement interpretation. Were it otherwise the system whereby grievances are settled, particularly when such settlements are made in writing and intended to have general application, would clearly be discouraged, with an obviously negative effect on labour relations stability. It is for that reason that the jurisprudence is clear, and that arbitrators enforce the terms of settlements such as that tendered in evidence in the case at hand.

The grievance must therefore be allowed. The Arbitrator finds and declares that the Company is bound by the terms of the settlement of October 6, 1999, and is directed to compensate Locomotive Engineer Nykoluk in accordance with the terms of that settlement, as well as all similar claims with respect to turnaround service Jasper to Jasper via Dalehurst, for the term of the current collective agreement.

May 27, 2002

(signed) MICHEL G. PICHER
ARBITRATOR