

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 17

Heard at Montreal, Monday, November 15th, 1965

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Three claims of Brakeman D.R. Weiss of Palmerston for a total of 405 miles at passenger rates account Train No. 680 allegedly operated ex Palmerston on December 15, 1963 with improper crew consist.

JOINT STATEMENT OF ISSUE:

The Company operated Train No. 680 from Palmerston to Toronto on December 15, 1963 with two motor coaches in service and one motor coach moved deadhead. The crew consisted of a Conductor (and Motorman) and a Baggage man. Brakeman D. R. Weiss who was on the spareboard at Palmerston, submitted a claim for 153 miles at passenger rate on the grounds that the Company violated article 73 rule (a) of the agreement when it did not use him as an additional number of the crew of Train No. 680. In addition he claimed:

102 miles at passenger rate under the provisions of article 25 of the agreement on the grounds that if he had been used as claimed above he would have been held at Toronto for 21 hours and 5 minutes; and

150 miles at passenger rate under the provisions of article 21 rules (b) and (c) of the agreement on the grounds that if he had been used as claimed above he would have been returned from Toronto to Palmerston deadhead on Train No. 675 December 16, 1963.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) G. W. MCDEVITT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. A. JOHNSTONE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

K. L. Crump	– Assistant Manager Labour Relations, Montreal
R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrews	– Senior Agreements Analyst, Montreal
R. J. Wilson	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Officer, Montreal
J. Mansfield	– Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

G. W. McDevitt	– General Chairman, Toronto
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AWARD OF THE ARBITRATOR

As indicated this dispute concerns an interpretation of article 73, concerned with the consist of crews on passenger service. It reads:

(a) Passenger trains not handling a local baggage car will have a Conductor and two brakemen; passenger trains handling a local baggage car will have a Conductor, Train baggageman and one brakeman, and if eight or more cars are handled will also have a flagman; one or two box baggage or refrigerator cars to count as one car and three or four as two cars. Steam Generator Unit in service and coupled to the locomotive will not be included in the count of cars.

(b) Manning of oil, electric and other motor coaches:

(1) When no trailer is operated crew will consist of a conductor (and motorman) except where the volume of baggage and express to be handled warrants the addition of a baggageman.

(2) When a trailer is operated, crew will consist of a conductor (and motorman) and either a baggageman or a brakeman, and when conditions warrant, both a baggageman man and a brakeman.

NOTE: It is understood that in cases where conditions warrant the above may be varied from by joint agreement, and reciprocal relief will be afforded in the manning of the various runs. The general conditions of the run such as the number of times the train is required to take siding, the volume of baggage, mail and express handled and the amount of other work, to be taken into consideration when deciding as to the consist of the crew. In case of a difference of opinion as to the necessity for a brakeman or baggageman or both, the matter will be referred for adjustment to the proper officer of the Railway and the General Committee.

In his submission for the grievor, Mr. McDevitt gave a comprehensive review of his contacts with various officials of management concerning what interpretation should be placed upon this provision, as it concerned the manning of motor coaches. In particular, he emphasised what he considered to be concurrence in his view as expressed to him in a telephone conversation by one official of the Labour Relations Department.

Mr. St. Pierre answered this submission by stating unless there was ambiguity in the applicable provision, the views of an individual official could be of no determining importance in the interpretation of the actual scope of a particular provision in a collective agreement. The words used, given their ordinary meaning, must govern.

Mr. McDevitt urged that rule (b) of the foregoing article is an exception to rule (a) and that rule (a) governs in all cases not specifically excepted by rule (b).

The Company's contention was that a "passenger train" specifically covered by rule (a) is separate and distinct from the operation contemplated by rule (b). The former deals with conventional passenger trains pulled by a locomotive and consisting of standard passenger train equipment, such as baggage, box and refrigerator cars. Steam generator units, which are used for heating passenger train equipment – but not motor coaches – are also mentioned. In addition, these trains generally include express and mail cars. All the foregoing equipment, it was claimed, is known as "head end equipment" because it is marshalled ahead of the passenger-carrying equipment on passenger trains. Conventional passenger trains vary in length from three or four cars to twenty cars and sometimes more.

Rule (b), Mr. St. Pierre contended, makes it clear a different type of operation is contemplated. Motor coaches are powered individually and are not designed to pull any significant amount of other equipment. These motor coaches did not contain any head end equipment of the type used on conventional passenger trains; and motor coach trains often consist of only a single unit. However, a train of two coaches is not at all uncommon.

Mr. St. Pierre also reasoned that rule (b) provides for two different situations: (1) when a motor coach is operated without a trailer; and (2) when a motor coach is operated with a trailer. He stressed that the language used places no limitation whatever on the number of trailers, but concerns itself only with the existence or non-existence of a trailer.

The attention of the Arbitrator was also directed to thirteen examples in the collective agreement where an inter-relation in provisions is recognized. Mr. St. Pierre suggested that the parties thus acknowledged the necessity for such a provision when a situation requires it. No such indication of connection between rules (a) and (b) appears in this article.

A study of these rules convinces us that (b) was designed for a purpose separate and apart from that contemplated by rule (a). It must therefore be considered alone in determining the validity of this claim. As indicated, Section 2 thereof provides that when a trailer is operated, the crew "will consist of a conductor (and motorman) and either a baggageman or a brakeman, and when conditions warrant, both a baggageman and a brakeman".

The only manner in which this claim could succeed, having regard to that language, would be if it were established that the particular conditions existing at the time in question warranted both a baggageman and a brakeman. The two motor coaches had the required baggageman. The addition of an empty deadhead coach would not be a condition that could reasonably be interpreted as warranting additional crew.

For these reasons this claim must be denied.

(signed) J. A. HANRAHAN
ARBITRATOR