CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 232

Heard at Montreal, Wednesday, September 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor J.C. Steel and Brakeman F.J. Noonan, Ottawa for February 15, 1969.

JOINT STATEMENT OF ISSUE:

On February 15, 1969, Spare Trainmen J.C. Steel and F.J. Noonan were called as Conductor and Brakeman respectively, to handle a passenger extra (turbotrain) from Brent to Ottawa. For this trip they submitted a time return claiming 184 miles at through freight rates of pay. The Company allowed payment for 197 miles at passenger rates of pay.

Subsequently, the employees submitted a time return dated March 18, 1969, each claiming 53 miles at through freight rates of pay, allegedly representing the difference between the payment claimed and the payment allow by the Company for February 15, 1969. The Company declined payment of these claims.

The Union contends that in declining to make payment for the trip at through freight rates of pay, the Company violated the first paragraph of Article 8, Rule (a) of Agreement 4.16.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. ROBT. ASHMAN	**(SGD.) K. L. CRUMP**
GENERAL CHAIRMAN	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
W. D. Connon	– Superintendent Transportation, Capreol
W. J. A. Daly	– Assistant Superintendent, Capreol

And on behalf of the Brotherhood:

G. R. Ashman	General Chairman, Toronto

AWARD OF THE ARBITRATOR

The first paragraph of Article 8 (a) is as follows.

> **Rates of Pay – Freight Service**
>
> Rates of pay for trainmen on trains propelled by steam or other motive power in through and irregular freight, mixed, work, wreck, construction, circus, wedge snow plow and flanger specials, light engine or engine and caboose, trains established for the exclusive purpose of handling milk or express and all other unclassified service, shall be as follows:

That article contains no reference to a turbotrain, and there was no such equipment in existence at the time the article was written. Nothing turns on that, however, for the article could well encompass new types of equipment, provided that the equipment in each case comes within the purview of the article. It is the union's contention that the work in question comes within the phrase "all other unclassified service", as it appears in article 8 (a).

The phrase "all other unclassified service" is to be construed in the context of article 8 (a) as a whole. That article is concerned with rates of pay for freight service, and all of the work referred to in article 8 (a) is, in one form or another, freight service. It is of course of no moment that the grievors were called for "passenger service", for another way of stating the issue is to ask whether they were correctly called in that manner. Little, if anything, turns on the fact that the grievors were uniformed as for passenger service, or even on the fact that the turbotrain was designed for passenger service. The question is whether it was in fact being used in freight service on the occasion in question.

I was not referred to any definition of either "passenger" or "freight" service, or to any criterion by which the characterization of any particular trip as in passenger or freight service could easily be made. Article 1 of the collective agreement sets out "rates of pay for trainmen on trains propelled by steam or other motive power", a provision too broad to be of assistance here. Article 8(a) refers to "trainmen on trains ... in through and irregular freight" and in other particular sorts of work, ending with the general provision set out above. It is clear however, that article 8 is a provision relating to freight service, and the grievors must be shown to have been in freight service to be entitled to the rates there set out.

The union referred to equipment trains and to Sperry rail detector cars, as examples of trains coming within "all other unclassified service", and with respect to which freight rates are paid. No doubt those are properly cases calling for freight rates, and it may be that there is some analogy with the trip here in question, for the turbotrain was not in regular passenger operation but was being used in the course of testing its equipment and operations. The important distinction, in my opinion, is that the trip was for the purpose of testing the train's own performance and to simulate certain aspects of regular passenger services. Everything about the trip was directed to the operational improvement of passenger services, and in my view the crew was properly called for passenger service pursuant to the passenger train crew consist provisions. While there were no paying passengers aboard, there were passengers, and the duties of the crew must have resemble much more those of a crew in regular passenger service than those of a crew in freight service.

For the foregoing reasons, it is my conclusion that this is not a case in which article 8(a) applies. The claims are accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR