

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 362

Heard at Montreal, Tuesday, May 9th, 1972

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION (T)**

### **DISPUTE:**

Claims of crews in charge of Conductors K. Kasper, G. L. Mantha and T. E. McKinley, February 22, 1970.

### **JOINT STATEMENT OF ISSUE:**

On February 22, 1970 an unassigned pool crew in charge of Conductor K. Kasper was ordered, in proper turn, at the away-from-home terminal of Foleyet to handle train No. 308 in straight-away service to their home terminal at Capreol. Upon reporting for duty, the crew was required to proceed light to Missonga, from which point they operated train No. 308 through Foleyet to Capreol, the final terminal or point for which called.

Conductor Kasper's crew claimed payment for the service perform on the basis of two separate tours of duty, namely, one time return claiming 109 miles each for the service from Foleyet to Missonga and return and another time return claiming 155 miles each for the service from Foleyet to Capreol. The Company allowed payment on the basis of continuous service from Foleyet to Capreol via Missonga.

These employees subsequently submitted claims for payment of 32 miles each at through freight rates of pay, being the difference between the miles claimed and the miles paid. Payment of the claims was declined by the Company and the Union contends that in refusing to make payment, the Company violated Article 9, Rule (c) of Agreement 4.16.

Two other pool crews from Capreol, in charge of Conductors McKinley and Mantha, who stood first and second out respectively at Foleyet, submitted claims under the provisions of Article 30 of Agreement 4.16, each contending they were run around when crew of Conductor Kasper operated train No. 308 through Foleyet enroute to Capreol. The Company also declined payment of these claims.

### **FOR THE EMPLOYEES:**

**(SGD.) G. R. ASHMAN**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) K. L. CRUMP**  
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto – System Labour Relations Officer, Montreal  
M. A. Matheson – Labour Relations Assistant, Montreal  
M. Del Greco – Employee Relations Assistant, Capreol  
L. B. MacDonald – Master Mechanic, Capreol

And on behalf of the Union:

G. R. Ashman – General Chairman, Toronto  
F. R. Oliver – Secretary, General Committee, Toronto

### AWARD OF THE ARBITRATOR

Conductor Kasper and crew claim to have performed two tours of duty in the circumstances described in the joint statement of issue. If this is correct, then the crew standing first out was run-around with respect to the second tour of duty and would have a justifiable claim to it. It is acknowledged however, that the crew standing second out would not be so entitled.

Conductor Kasper and crew were working in pool service on a first-in, first-out basis handling unassigned trains on the territory between Capreol and Foleyet. On February 22, 1970, they were ordered, in their proper turn, to handle train No. 308 in straight-away service from Foleyet eastward to their home terminal at Capreol. When they reported for duty, however, they were instructed to proceed first with engine and caboose to Missonga, 18.6 miles west of Foleyet, to pick up their train, No. 308, since the crew handling the train from Hornepayne to Foleyet had booked rest at Missonga. In my view, nothing turns on the fact that the territory west of Foleyet is usually served by Hornepayne crews. The question is not whether the instructions were proper but whether the trip from Foleyet to Missonga and return constituted one complete tour of duty. When the crew returned with their train to Foleyet, they then carried on through to Capreol in the usual manner.

The Union's primary allegation is that there was a violation of Article 9(c), which provides as follows.

- (c) Trainmen in pool or irregular freight service may be called to make short trips and turn-around, with the understanding that one or more turn-around trips may be started out of the same terminal and paid actual miles, with a minimum of one hundred (100) miles for a day, provided (1) that the mileage of all the trips does not exceed one hundred and twenty (120) miles, (2) that the distance run from the terminal to the turning point does not exceed thirty (30) miles, and (3) that trainmen shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight (8) consecutive hours, except as a new day subject to the first-in first-out rule, or practice.

In my view, the provisions of Article 9(d) are also of some significance. They are as follows:

- (d) Trainmen will be notified when called whether for straight-away or turn-around service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, engine failure, wash-out, snow blockade or such other like emergency.

Trainmen will not be called for turn-around service where the distance from the terminal to the turn-around point is 100 miles or over and in unassigned service the first-in first-out rule will apply to unassigned trainmen at the turn-around point.

This does not apply to work service (including Sperry cars, inspection cars, weeding machines and similar equipment when used in service during trip or day's work) wreck or construction service.

The circumstances of the case are very similar to those of **Case No. 204**, although the Union points out that that case dealt with an assigned crew, whereas in the instant case an unassigned crew is involved. That case involved the provisions of Article 9(d), and it was held that the performance of certain short turn-around work did not constitute a change in notification of a crew called for straight-away service, since the straight-away assignment was in fact carried out. The same may be said here. The crew, albeit in unassigned service, was called for straight-away service from Foleyet to Capreol and in fact carried out that service. They were not called for turn-around service, although they did perform the short turn-around described, prior to proceeding on from Foleyet to Capreol. There is no "automatic end of trip" rule which would have the effect of concluding a tour of duty when the grievors passed Foleyet after having gone to pick up the train at Missonga.

The collective agreement clearly distinguishes between straight-away and turnaround service. Where employees are called "to make short trips and turnaround", Article 9(c) sets out certain limits on the extent of the work that may properly be performed. In **Case No. 196** a crew was called in straight-away service but did not complete that service but returned to the terminal and then (being first out) proceeded with other work. In the circumstances of that case it was held the crew did perform two separate tours of duty, and in two distinct classes of service, on the day in question. In the instant case, however, the straight-away service for which the grievors were called was performed.

The situation is analogous to that dealt with in a number of previous cases where it was held that one continuous tour of duty was performed. Thus, in **Case No. 197**, the crew carried out the straight-away service for which it was called, but preceded that with a short turnaround assignment assisting another train. The reasoning of that case was adopted in **Case No. 204** which involved the same parties and the same agreement as in the instant case.

For the reasons set out above and in the earlier cases, it is my view that in the circumstances of this case the grievors performed one tour of duty on the day in question. Accordingly the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**