

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 416

Heard at Montreal, Tuesday, July 10th, 1973

Concerning

TORONTO, HAMILTON & BUFFALO RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

### DISPUTE:

Claim of Trainmen C.F. Robins and J.W. Anderson for one day each at Passenger Conductor's rate for not being called to work train No. 371 from Welland to Hamilton, September 8th, 1972.

### JOINT STATEMENT OF ISSUE:

On September 8th, 1972, TH&B Conductor A. E. LeRoy, Baggage men W. Duncan and Engineman L. Beebe were assigned to joint Penn Central-TH&B passenger trains 376-371 between Hamilton, Ontario, and Buffalo, N.Y.

On the return trip from Buffalo and while on Penn Central trackage at Canada Division, Mileage 12.65, train 371 consisting of Canadian Pacific Rail self-propelled Rail Diesel Car units 9200 and 9103, was involved in an accident at 5:35 p.m. which derailed and damaged unit 9200.

Arrangements were made by Penn Central to furnish a bus to accommodate the passengers and baggage from train 371 and provide transportation via Highway to Welland, Fenwick, Smithville, Hamilton and Toronto, in lieu of the rail service normally provided by train 371.

Conductor LeRoy and Baggage man Duncan accompanied the bus with the passengers and baggage to Hamilton, making 371's regular station stops at Welland, Fenwick and Smithville enroute. Engineman Beebe remained with the disabled Rail Diesel Car Units.

After Rail Diesel Car 9200 was re-railed at 10:13 p.m., it, along with unit 9103 which was undamaged, was delivered by Penn Central switch crew to TH&B at Coyle Yard, Welland. At Coyle, the units were turned on the wye by a TH&B switch crew so the damaged unit would trail and could be towed by the undamaged unit 9103. Following this, both units left Coyle at 11:18 p.m. in charge of Engineman Beebe and accompanied by Trainmaster & Road Foreman of Engines F.N. Foster. The units were delivered directly to TH&B Roundhouse at Hamilton and following temporary repair they were sent to Canadian Pacific Rail at Toronto.

The United Transportation Union (T) contends that C.F. Robins and J.W. Anderson are entitled to the payment claimed under Articles 24 and 43-2(A) in that Rail Diesel Cars Nos. 9103 and 9200 assigned to No. 371 were operated from Welland to Hamilton, September 8th, 1972, without a train crew.

The Company has declined these claims on the basis that Article 24 deals with the handling of switches and hand brakes and giving of signals and has no bearing as none of these functions were performed by a Company Official as is apparently alleged.

The Company also contends that Article 43-2(A) applies only to passenger service and in this case, the Rail Diesel Car Units were not used in passenger service and no passenger service was performed during their movement from Welland to Hamilton. These self-propelled units moved Welland to Hamilton as an engine. The passenger service normally provided between Welland and Hamilton by train 371 was on September 8th, 1972, furnished by a bus which was manned by the train crew assigned to our Buffalo-Hamilton passenger service.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) L. J. ENMAN (SGD.) H. M. BABCOCK

GENERAL CHAIRMAN GENERAL MANAGER

There appeared on behalf of the Company:

J. A. Hill – Superintendent, Hamilton

F. N. Foster – Trainmaster & Road Foreman of Engines, Hamilton

And on behalf of the Brotherhood.

L. J. Enman – General Chairman, Grimsby

### AWARD OF THE ARBITRATOR

As will be seen from the Joint Statement of Issue, Train 371 had as its train crew a conductor and a baggageman. This crew would appear to have been proper, as the crew required by Article 43(b)(2)(a) for self-propelled two car service. In addition the train was operated by one engineman.

When the train derailed, arrangements were made for the transportation of the passengers by bus, and the two members of the train crew accompanied the passengers on this continuation of their journey. The two units which had made up the train were taken to Coyle Yard, turned, and then dead-headed to Hamilton, under the control of the original engineer, accompanied by the Trainmaster. The claim in the instant case is that a train crew ought to have been called for the train which was dead-headed to Hamilton.

The two units which were coupled together (unit 9200 being placed to the rear because of damage to the brake controls) did constitute a "train". It may be doubted whether they could any longer be said to constitute Train No. 371; rather, I think, the movement should properly be described as one of out-of-service self-propelled cars dead-heading to Hamilton. It was not a movement in passenger service, and the provisions of Article 43 did not apply with respect to it.

As to the presence of the Trainmaster on the movement it is clear that it would not have been proper for him to act as a member of a train crew. Article 24 forbids certain activity of that type by Company officials. It has not been shown, however, that the Trainmaster did in fact carry out the functions of a conductor or trainman on the movement in question. If he did, then that would show that a conductor or trainman was entitled to be called for such work. The entry in the train register showing the Trainmaster as conductor was not made by the Trainmaster, and would appear to be inaccurate.

If the Trainmaster could not properly have performed any of the work of a conductor or trainman with respect to the movement (except in an emergency, which did not arise), then the question may be asked whether the movement could properly be in the charge of an engineman alone, or, if not, whether anything in the collective agreement requires the presence of a member or members of a train crew in such circumstances. The Union referred to Canadian Transport Commission Order No. 0-8 which, in the case of a movement such as this with two light engines coupled, would require a conductor. The entire order was not submitted, and the Company maintained that it did not apply with respect to CTC territory, as was the territory in question. As it was, the order would have been complied with in any event, since the Trainmaster was qualified as a conductor. I was not, however, referred to any provision of the collective agreement which dealt with train crew requirement for a movement such as this.

Since it has not been shown that there was any violation of the collective agreement, the grievance cannot succeed. Certainly there was no requirement on the Company to call a conductor and a brakeman, since this was not a movement to which Article 23 applied.

For the foregoing reasons the grievance must be dismissed.

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

**ARBITRATOR**