

CANADIAN RAILWAY OFFICE OF Arbitration

CASE NO. 446

Heard at Montreal, Tuesday, June 11th, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Yardman A. Bussey, Windsor, Ontario for guarantee payment, June 23, 1973.

JOINT STATEMENT OF ISSUE:

Yardman A. Bussey held a regular assignment for which the work week was Saturday to Friday. During the work week from June 23 to 29, he worked four shifts on his regular assignment at pro rata rate, two additional shifts at time and one-half, and was paid a minimum day at pro rata rate, in accordance with Article 105, Rule (b) for deadheading from Chatham to Windsor.

Because he was regularly assigned on a permanent assignment, Mr. Bussey was entitled to a guarantee of five days' pay per work week, exclusive of overtime. In respect of the work week from June 23 to 29, Mr. Bussey claimed a day's pay in addition to his other earnings, because he had worked only four days on his assignment that week. The Company declined the claim on the basis that the day's pay for deadheading could be used toward the guarantee. Mr. Bussey submitted a grievance contending that, by not allowing the claim, the Company had violated Article 94.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) G. E. McLELLAN (SGD.) G. H. BLOOMFIELD

ASSISTANT GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – System Labour Relations Officer, Montreal

J. A. Cameron – Labour Relations Assistant, Montreal

M. R. Robinson – Transportation Officer, Montreal

And on behalf of the Brotherhood:

G. E. McLellan – Assistant General Chairman, Toronto

C. G. Reid – Vice-General Chairman, Toronto

K. C. Hillgartner – Secretary, General Committee, Windsor

J. H. Hillier – Local Chairman, Niagara Falls

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AWARD OF THE ARBITRATOR

Article 94 of the collective agreement provides as follows:

94 Regularly assigned yardmen on permanent assignments will be paid not less than five days in any one work week exclusive of overtime. In any one work week in which one or more general holidays occur, the work week guarantee shall be reduced by the number of general holidays occurring in the work week. Extra service may be used to make up the guarantee.

Yardmen in regularly assigned service laying off of their own accord or where the permanent assignment is on only for a part of the work week, will receive their full proportion of the work week guarantee. Classed yard foremen filling permanent assignments as yard helpers, who are taken from their assignments to work as yard foremen on a temporary vacancy or temporary assignment will be entitled to the guarantee.

This article does not apply to spare men.

The grievor was entitled to the benefit of this article, and was entitled to be paid not less than five days in the week in question. In considering whether such payment has been made, overtime payments are not considered. In the week in question the grievor did work some overtime, and would appear to have been properly paid therefor. Those payments are not considered in determining whether he was paid the guaranteed amount.

The grievor worked for four days on his regular assignment. Apart from his overtime payments, the grievor also received one day's pay for deadheading, as indicated in the Joint Statement of Issue. The question is whether that payment should count in determining whether he was paid the guaranteed amount.

From the general first sentence of Article 94, it would seem that the payment for deadheading would properly be included in determining whether the grievor had been paid not less than five days in any one work week. The exception specifically noted is for overtime payments. In the last sentence of the first paragraph it is noted that "extra service" may be used to make up the guarantee. The deadheading in this case may more properly be considered as a form of "extra service" than as overtime, and having regard to Article 94 above, it would be my view that the payment for deadheading should be counted in determining whether the guaranteed amount was paid.

The Union relies particularly on Article 93-A(g) of the collective agreement for the proposition that the payment for deadheading cannot be counted. The material provisions of that article are as follows:

(g) Overtime Provisions - Days Off

1. Employees worked more than five straight time eight-hour shifts in yard service in a work week shall be paid one and one-half times the basic straight time rate for such excess work except:

(I) Where days off are being accumulated under rule (c) of this Article,

(II) When changing off where it is the practice to work alternately days and nights for certain periods;

(III) When working through two shifts to change off., **(IV)** Where exercising seniority rights from one assignment to another;

(V) Where paid straight time rates under existing rules or practices for a second tour of duty in another grade or class of service.

In the event an additional day's pay at the straight time rate is paid to a yard service employee for other service performed or started during the course of his regular tour of duty, such additional day will not be utilized in computing the five straight time eight-hour shifts referred to in Section (1) of this rule (g).

2. There shall be no overtime on overtime; neither shall overtime hours paid for, nor time paid for at straight time rate for work referred to in section (1) of this rule (g), be utilized in computing the five straight time eight-hour shifts referred to in such section (1) of this rule (g), nor shall time paid for in the nature of arbitraries or special allowances such as attending court, inquests, investigations, examinations, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

In particular, the Union relies on the express language of Article 3-A(g)(2), that "special allowances such as ... deadheading" shall not "be utilized for this purpose", although there are certain exceptions then set out. The "purpose" there referred to, however, is, as the article makes clear the computing of "the five straight time eight-hour shifts referred to in such section (1) of this rule (g)", that is, the computing of the hours in excess of which overtime is to be paid. There is no connection between this calculation and the question whether a guarantee has been met, and I do not consider that Article 93-A(g) has any modifying effect on what appears to be the plain meaning of Article 94.

This case is quite different from that which arose in **Case No. 415**, where it was held that certain "arbitrary" payments were not to be counted in calculating a monthly guarantee under provisions quite different from those in the present collective agreement. A somewhat closer analogy might be found in **Case No. 170**, where it was held that payments of holiday pay could be counted in determining whether the guaranteed amount had been paid but again, the provisions involved are different from those involved here. One question raised in this case by the Union is, however, quite analogous to a question raised and dealt with in that case, namely, whether there can be said to have been any real payment for the

deadheading, if that payment is to be included in calculating the guarantee. The same question could be raised with respect to the four days' regular pay received for time actually worked, and the answer in each case is that what is provided for in Article 94 is a guarantee of a minimum payment in the event that amount is not paid under some other proper head; it is not a provision for an extra payment beyond that.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR