

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 680

Heard at Montreal, Wednesday, October 11, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor H.W. Schieffert and crews, for payment at the appropriate car step-up rate when deadheading between Cranbrook and various intermediate points in combination deadheading and working service.

JOINT STATEMENT OF ISSUE:

Conductor H.W. Schieffert and crews, working in unassigned through freight service, were called for 19 trips in combination deadheading and working service, in accordance with Article 22, Clause (b) which reads as follows:

Trainmen required by the Company to deadhead to an intermediate point and going from such point to a terminal in service or going into work train service for the balance of the day, or vice-versa, will be paid for the combination deadheading and working service as follows:

When deadheading precedes working service, the deadheading payment will be continuous from time ordered for until working service actually begins; when deadhead follows working service payment for working service will continue until deadheading commences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate applicable in the combination service will be allowed. For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day.

Payment for the entire trip was claimed on the basis of a rate of pay which included the appropriate car step-up rate earned by the crew in accordance with Article 11, Clause (b) which reads as follows:

Basic rates in all train service, other than passenger, shall be increased according to the maximum number of cars, including caboose, hauled in trains at any one time on a road trip anywhere between initial starting point and point of release as follows:

Effective January 1, 1976

81 to 100 cars 22 cents per 100 miles.

Add 22 cents for each additional block of 20 cars or portion thereof.

Effective January 1, 1977

81 to 100 cars 24 cents per 100 miles.

Add 24 cents for each additional block of 20 cars or portion thereof.

The Company reduced the claims for the deadheading portions of these trips by the amount of the car step-up rate to the basic through freight rate contending the car step-up rate did not apply to the deadhead portion of these trips.

The Union contends Conductor H. W. Schieffert and crews are entitled to payment as claimed as the highest rate applicable in the combination service, included the car step-up rate for each of these road trips where the initial starting point for each trip was Cranbrook.

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. M. PATTERSON
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L. J. Masur – Supervisor Labour Relations, Vancouver
J. Ramage – Special Representative, Montreal
J. T. Sparrow – Manager Labour Relations, Montreal
W. C. Tripp – Superintendent, Revelstoke Division, Revelstoke

And on behalf of the Brotherhood:

P. P. Burke – General Chairman, Calgary

AWARD OF THE ARBITRATOR

The grievors were in each case called to work in combination deadhead and working service. They were deadheaded by bus to the point where they took their trains, and thereafter worked in unassigned through working service. The deadheading thus preceded the working service.

The payment to be made is spelled out by Article 22 (b): the deadheading payment is to be continuous from time ordered for until working service actually begins. There is no problem in this case as to the length of time for which payment is to be made. Since deadheading and working service were combined in a continuous tour of duty, then not less than a minimum day at the highest rate applicable in the combination service is to be allowed. The highest rate applicable in this case included the step-up rate provided for in Article 11(b). That rate would be the one to be used in calculating the minimum. It appears that such minimum payment was made in each case. If it was not the employees were clearly entitled thereto. That consideration does not, however, go to the question of the rate payable in respect of the deadheading portion of the grievors' service. For the working service portion, their entitlement to the benefit of the step-up rate appears to be clear. For the deadheading portion, however, the Company paid the grievors at the basic through freight rate, and did not include therein the step-up rate.

The grievors were assigned to the combination service described in order to relieve existing crews. The matter of payment in such cases was dealt with by the parties in a Letter of Understanding dated December 15, 1976. In cases such as those of the grievors, that letter provided as follows:

Trainmen sent to relieve under the above conditions and transported by other than rail transportation will be paid time or miles from the initial terminal to the point to which they are sent to relieve. The provisions contained in Article 22 of the Collective Agreement will otherwise apply.

The grievors were paid in accordance with this provision. That provision itself, however, does not set out the appropriate rate to be applied, nor does it deal with the matter of the inclusion or exclusion of the step-up rate. The only provision to which I was referred which deals explicitly with the matter of the rate to be paid for deadheading is in Article 22(a), which deals with trainmen required to deadhead from one terminal to another. That article, then, does not apply expressly to the situation before me. It provides, however, that trainmen deadheading be paid "at the through freight rate" for the actual time occupied. In such a case, there could be no question of any step-up rate being added, because there is at no stage any train whose consist would be material to the wage rate of employees deadheading.

In Article 22(b) there is certainly no express provision that the step-up rate is to be included in the rate to which employees are entitled in respect of their time deadheading. The step-up rate does influence that matter to the extent that the minimum payment is calculated having reference to it. It does not, however, go farther than that. There is, clearly, no intrinsic reason why the payment made to employees who are deadheading should depend on the length of a train they are not on. In this respect, what is said in **Case No. 639** appears to me to be pertinent: the step-up rate is

one which is related to actual work performed. It bears no relation to deadheading as such. Neither Article 11 nor Article 22 has the effect of increasing the through freight rate for the deadhead portion of combination service such as that in question here.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR