CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 807

Heard at Montreal, Tuesday, February 10, 1981

Concerning

BRITISH COLUMBIA RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for 100 miles by J. Kingsborough and Crew on date of January 26, 1980.

JOINT STATEMENT OF ISSUE:

On January 26, 1980, J. Kingsborough was deadheading on Passenger Train #1 from North Vancouver when the train was disabled at Mile 8.5 and returned to North Vancouver. J. Kingsborough submitted ticket for 114 miles.

The Company declined payment on the basis that there is no provision within the Collective Agreement for payment.

The Union contends that payment should be for 100 miles and that the Company violated Article 221-C (i) and Article 209 (e) of the Collective Agreement Revision 1979. For these reasons, 100 miles should be paid to J. Kingsborough and Crew.

The Company has declined the Union's request.

FOR THE EMPLOYEES:

(SGD.) K. A. LINDLEY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. MACDONALD
VICE-PRESIDENT-LABOUR RELATIONS

There appeared on behalf of the Company:
P. A. MacDonald – Vice-President, Labour Relations, Vancouver
H. Collins – Supervisor, Labour Relations, Vancouver
B. M. McIntosh – Labour Relations, Vancouver

And on behalf of the Brotherhood:
K. A. Lindley – General Chairman, Surrey
J. H. Sandie – Vice-President, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The grievors, by bulletin, were in unassigned freight service. On the day in question they were travelling deadhead on a passenger train, as set out in the Joint Statement. The passenger train (Train No. 1) left North Vancouver Station at 0740 on its run to Lillooet. It ran into trouble at mileage 8.5 (at 0754 K), returned to North Vancouver and then, under new power, proceeded to Lillooet, passing mileage 8.5 at 0910 K.

Two time claims were submitted on behalf of the grievors. One was for 172 miles for deadheading from North Vancouver to Lillooet on the day in question. The other, for the same day, was for 114 freight miles for deadheading from North Vancouver to mileage 8.5 and return. The grievors were paid for the day on the basis of the combined times: that is they were paid for the "deadheading" miles from North Vancouver to Lillooet, plus the "deadheading" time from mileage 8.5 to Locomotive Shop in North Vancouver and return.

It is claimed that the Company did not pay the grievors in accordance with the collective agreement. It is contended that there was a violation of Article 221(c)(i), and of Article 209(e). Article 221(c)(i) provides that crews in unassigned service are to be run first-in, first-out, and that crews which are run-around will be paid 100 miles for each run-around. That Article, if violated, would not benefit the grievors. There is no question as to their having been properly called to run deadhead from North Vancouver to Lillooet in the first place. If, by calling on the grievors to make the run to Lillooet even after the disabled train had returned to North Vancouver, the Company could be said to have "run-around" some other crew, that would be of no benefit to the grievors. In my view, Article 221(c)(i) is not material to this case.

Article 209(e) of the collective agreement in effect at the material times is as follows:

> **209 (E) AUTOMATIC TERMINAL RELEASE**
> A trip will end automatically on arrival at a terminal except as otherwise provided and Trainmen will not be required to do work other than storing their own train and placing locomotive to shops.
>
> Crew may be required to spot stock from their own train on arrival at terminal if no yard crew on duty.
>
> With respect to mixed, wayfreight or switcher assignments in turnaround service in cases where turnaround point is terminal for unassigned crews, automatic terminal release will not apply at turnaround point.
>
> The meaning of terminal is understood to be the regular points between which crews regularly run, i.e., assigned by bulletin.

In this case, I do not deal with any question affecting the crew which was actually operating the train in question. Article 209(e) sets out limitations on the work of crews in freight, mixed, wayfreight and switcher train service in cases of "arrival at a terminal". Here, the grievors were travelling deadhead on a passenger train. It seems clear that this was "deadheading paid separately from other service". Payment for such work is expressly dealt with in Article 125(a) of the collective agreement, which is as follows:

> **125 (a)** Deadheading paid separately from other service will be computed on the basis of miles or hours, whichever is the greater, and paid at the same rates as earned by the corresponding employees working the train on which they travel, with a minimum of 100 miles at through freight rates, overtime pro rata.

Under this provision, it is clear that the rates to be paid the grievors, although they were bulletined in unassigned freight service, would be "the same rates as earned by the corresponding employees working the train on which they travel", that is, passenger rates. Such payments, it may be noted, would be computed on the basis of miles or hours, whichever was the greater. Thus, there would be some compensation for the fact that the grievors spent a certain amount of time on return and delay in North Vancouver, even though the mileage involved was slight.

More significant for this case, however, is Article 125(c) of the collective agreement, which is as follows:

> **125 (C)** When deadheading is coupled with service paid for at yard rates, construction train rates or work train rates, such deadheading time and any dead time will be paid for separately from the time occupied in yard service, construction train service or work train service, miles or hours

> whichever is the greater. If deadheading is performed on a passenger train, it will be considered as passenger service and if on a freight train as freight service.

In particular, the last sentence of Article 125(c) really determines the matter. The grievors, although bulletined in unassigned freight service were, on this particular occasion, deadheading on a passenger train. They were, therefore, to be considered as in passenger service at that time. Article 209 simply does not apply to employees in passenger service. There is no reason, then, to conclude that the grievors were released from service when the disabled train returned to North Vancouver before resuming its trip to Lillooet. Their payment for the entire duty was properly calculated having regard to Article 125 of the collective agreement.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR