CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1571

Heard at Montreal, Thursday, October 16, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of Trainmen T. G. Howard, M. W. Rainford, D. W. Woehl, R. M. Selbie and J. J. Coffey of Hamilton, Ontario for payment of 150 miles at passenger rates as payment for deadheading on various dates between October 18, 1983 and July 3, 1984.

JOINT STATEMENT OF ISSUE:

On various dates between October 18, 1983 and July 3, 1984. the grievors were required to deadhead from Hamilton to either Caledonia or Paris, Ontario to perform work train service and, thereafter, were required to deadhead back to Hamilton. For these tours of duty, the grievors claimed and were compensated on the basis of combined deadheading and work train service.

On either October 12 or October 25, 1984 the grievors submitted claims for 150 miles at passenger rates of pay, contending that on each of the days in question they were entitled to payment of a basic day for deadheading back to Hamilton.

The Company declined payment of all such claims on the grounds that they had not been submitted within the time limits specified in Agreement 4.16.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) TOM HODGES	(SGD.) D. C. FRALEIGH
FOR: GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

D. W. Coughlin	– Manager Labour Relations, Montreal
J. B. Bart	– Labour Relations Officer, Montreal
M. C. Darby	– Coordinator Transportation, Montreal

And on behalf of the Union:

R. A. Bennett	– General Chairman, Toronto
T. G. Hodges	– Vice-General Chairman, Toronto
B. Leclerc	– General Chairman, Quebec
W. G. Scarrow	– General Chairman, Sarnia

AWARD OF THE ARBITRATOR

It is not disputed that the events giving rise to the claims of the five grievors arose between October 18, 1983 and July 3, 1984. The grievors' claims were not submitted before October 12, 1984. It is clear that the claims submitted at that time were motivated by the settlement of an outstanding grievance by Conductor J. R. Rector, whose claim was progressed through the grievance procedure and resolved in his favour on August 29, 1984. In effect the grievors were resubmitting travel claims which had earlier been submitted in a manner consistent with the prior interpretation of the collective agreement adopted by the Company, albeit erroneously, before the Rector grievance.

The issue is whether the grievance against the denial of the second claims by the Company is timely. Article 84.2 of the collective agreement provides in part, as follows:

> (a) Step 1 – Presentation of Grievance to Immediate Supervisor
>
> (1) within 60 calendar days from the date of cause of grievance the employee or the Local Chairman may present the grievance in writing to the immediate supervisor:

It is not disputed that the grievances filed in the instant case fall outside the period of 60 calendar days from the date the Company paid the employees pursuant to their initial claims for the travel and work in question. The Union submits, however, that the second claims were submitted "at the earliest possible date" as required in article 62.1 (g) of the collective agreement, since the employees did not become aware of their better right until the Rector grievance succeeded.

The Arbitrator has some difficulty with that submission. It is plainly for the employees and their Union to be vigilant to ensure that their rights under the collective agreement are not violated. The time limits established within the grievance procedure are clearly intended to promote the early identification claims adverse to the Company and to minimize the hardship of dealing with stale claims, or liability extending into an indefinite past.

In the instant case Conductor Rector exercised the care and vigilance necessary to protect his rights. The fact that other employees initially went along with the Company's erroneous interpretation does not shelter them from the application of the time limits clearly established within the collective agreement. Nor can the Arbitrator accept the Union's submission that the denial of the second claims refiled by the employees constitutes a fresh violation of the collective agreement from which the time limits are newly to be computed. Plainly the cause of the employees' grievances arose when their initial claims were paid in a manner inconsistent with the provisions of the collective agreement. If the position asserted by the Union were correct there would be little finality to claims under the collective agreement. That is plainly not what the parties intended.

For these reasons the grievances must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR