

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1748

Heard at Montreal, Tuesday, 9 February 1988

Concerning

**VIA RAIL CANADA INC.**

And

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Time claim for five hours and five minutes at Senior Service Attendant rate of pay on behalf of Mr. H. Henry for deadheading from Montreal to Toronto.

### **JOINT STATEMENT OF ISSUE:**

On January 25, 1987, Mr. Henry, a spareboard employee, was instructed by a Supervisor to return in service on Train No. 169, after having arrived at Montreal on Train No. 62 from Toronto.

Mr. Henry told the Supervisor he was hungry, in need of a bath, something to eat, and had already worked seven hours and fifty minutes. He was replaced by C. Dignazia, a Montreal-based employee, and returned deadhead to Toronto. Mr. Henry claimed compensation for deadheading from Montreal to Toronto, which the Corporation refused to pay.

The Brotherhood has cited a violation of Articles 4.10, 4.14, 6.4 and 24.21 of Collective Agreement No. 2 in support of payment for deadheading from Montreal to Toronto.

The Corporation rejected the claim in accordance with Article 7.6(a) and (b) of Collective Agreement No. 2.

**FOR THE BROTHERHOOD:**

**FOR THE CORPORATION:**

**(SGD.) TOM MCGRATH**  
NATIONAL VICE-PRESIDENT

**(SGD.) A. D. ANDREW**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

C. O. White                   – Labour Relations Officer, Montreal  
J. Kish                       – Officer, Personnel and Labour Relations, Montreal  
H. Dickenson               – Supervisor, Manpower, Planning Quebec

And on behalf of the Union:

T. Stol                       – General Chairman, Toronto  
A. Cerilli                   – Observer, Winnipeg

### **AWARD OF THE ARBITRATOR**

In the Arbitrator's view, the instant grievance is resolved by the application of Article 7.6(b) of the Collective Agreement which provides as follows:

- 7.6(b)** Employees who request additional layover at away-from-home terminals may be granted same provided the Corporation is not put to additional expense. They will forfeit their rights to return in extra service ahead of other spare employees who arrive later.

If their services were required during the additional layover requested by them at away-from-home terminal they will be returned deadhead without pay when they report for duty.

It is clear from the material filed that Mr. Henry did request additional layover time at an away-from-home terminal. Given the Corporation's wish that he continue in service on Train No. 169, his additional layover time implied a refusal to accept the assignment, which in turn put the Corporation to the cost of finding a replacement employee. If Mr. Henry were permitted to deadhead with pay on the same train, the Corporation would clearly be put to additional expense arising from Mr. Henry's request for additional layover time at his away-from-home terminal. During the grievor's additional layover time his services were required at the away-from-home terminal. In these circumstances, given the plain language of Article 7.6(b) the Corporation was within its rights in determining that Mr. Henry was required to be returned to Toronto deadheading without pay.

While it is true that there was some overlap time between the grievor's release time from Train No. 62 and the reporting time for train No. 169, there is nothing in the material to suggest that service on Train No. 169 would have worked undue hardship on the grievor, who was in fact available for service substantially in advance of the scheduled departure of Train No. 169. Although it is true that the resulting assignment would have meant a long day of continuous service for the grievor, the necessity for working such hours on an occasional basis is expressly recognized within the Collective Agreement, as reflected in the terms of Article 4.2.

For the foregoing reasons the grievance must be dismissed.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**