

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2630

Heard in Calgary, Thursday, 11 May 1995

concerning

CANADIAN PACIFIC RAILWAY LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Claim of Conductor J.A. Waletsky of Calgary, Alberta.

JOINT STATEMENT OF ISSUE:

On January 25, 1994, Conductor Waletsky was called in straight-away service from Alyth to Field.

Conductor Waletsky deadheaded by taxi from Alyth to the intermediate point of Keith in combination service. Upon arrival at the intermediate point of Keith, Conductor Waletsky manned a freight train from Keith through to the objective terminal of Field. Conductor Waletsky submitted a wage claim for a one-hour premium payment at Keith pursuant to article 11(b) of the collective agreement.

The Union has requested payment of the one-hour premium claim.

The Company has declined the accede to the Union's request.

FOR THE COUNCIL:

(SGD.) L. O SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. E. KEIRAN
FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. Guenther – Labour Relations Officer, Vancouver
R. G. Weir – Manager, Operations, Calgary

And on behalf of the Council:

J. K. Jeffries – Vice-General Chairman, Cranbrook
D. Finnsen – Secretary, G.C.A., Saskatoon
P. Burke – Vice-President, UTU (Ret'd), Calgary

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On January 25, 1994 Conductor Waletsky reported for duty at Alyth Yard, where he obtained radios and bulletins prior to being deadheaded by taxi to the intermediate point of Keith, some 9.6 miles west of Calgary on the Laggan Subdivision. He and his crew then undertook the charge of a bulk commodity train which was assembled at Keith by the Bearspaw Switcher. Upon his arrival at Keith, Conductor Waletsky found the train assembled, brake tested and otherwise fully prepared for departure in straight-away service to the final terminal of Field. It appears, in fact, that Conductor Waletsky took possession of the train and proceeded to Field, without incident.

The grievance arises because Conductor Waletsky submitted a wage claim for a one hour premium payment for work performed at an intermediate point in straight-away service. The Union maintains that Keith was an intermediate point between the initial terminal of Alyth and the final terminal of Field. On that basis, it claims that the crew was required to pick up a car or block of cars at Keith as contemplated by articles 11(h) and 9(a),2(c) of the collective agreement, governing conductor only service. Those provisions are as follows:

11(h) When a conductor-only crew is required to perform work enroute defined in article 9A,2(c), the conductor will be paid on the minute basis at pro rata rates for all time so occupied with a minimum payment of one hour. If this work is performed at the pay points referred to in Clauses (f) and (g) hereof, the payment provided in those Clauses will not be allowed. All time paid for under this Clause will be paid in addition to pay for the trip but time actually worked will be deducted in computing overtime.

9(a)2 Parameters for Conductor-Only Operations

Notwithstanding the provisions of Article 9, all trains in freight service, except Roadrailer Service covered by separate memorandum of agreement, in other than passenger and self-propelled service, may operate conductor-only subject to the following requirements:

...

c) Enroute

A conductor-only crew will not be required to make more than two stops enroute, between the initial and final terminal, to pick up and/or set off a car or a block of cars.

The Arbitrator is satisfied that the Union is correct in its assertion that the grievor's tour of duty in straight-away service must be viewed as commencing at Alyth Yard and terminating at the objective terminal of Field (see **CROA 1745**). On that basis the Union is correct in characterising Keith as an intermediate point, for the purposes of the assignment in question.

Beyond that, however, the claim made by the Union becomes more questionable. While the Arbitrator appreciates that the Conductor-Only Agreement provisions are relatively new, and should be construed with considerable care, they cannot be read without an appreciation of the purpose for which they were negotiated. It appears to the Arbitrator that in fashioning the terms of article 11(h) the parties contemplated the additional burden which might be met by a conductor in Conductor-Only service to the extent that work might be performed enroute in circumstances that do not involve the help of an assistant conductor or brakeperson. The protection was intended to be limited to work as defined in article 9(a)2(c) of the collective agreement. That provision has two aspects: it limits the stops enroute to a maximum of two, and it refers to the work in question as picking up and/or setting off a car or a block of cars. At first blush, what the language appears to convey is what is traditionally understood as the dropping off, picking up or switching of cars or groups of cars at an intermediate point of an assignment. That, moreover, is not an unreasonable understanding, given the purposive underpinning of the provision, which is to give some relief to the single conductor compelled to perform such work in the absence of an assistant conductor or trainperson.

In the instant case, however, the Union asserts an entirely different understanding of the concept of picking up a car or a block of cars, and equates it to the taking over and departure of a fully assembled train. The argument made by the Union is not compelling. The facts in the instant case disclose no additional work or burden placed upon Conductor Waletsky at Keith, in the sense plainly contemplated by article 11(h), which must be read in conjunction with article 9(a)2(c). The parties to the Conductor-Only provisions of the collective agreement are not inexperienced

in drafting collective agreement language and could, no doubt, have fashioned clear and unequivocal language to affirm that a conductor is entitled to a special premium payment for merely deadheading from an original terminal and assuming control of a fully assembled train at an intermediate point. There is no such language to be found in the agreement, however. Further, I find it difficult to appreciate why the parties would have intended that a premium be payable to Conductor Waletsky for assuming control of his train at an intermediate point while no such premium would be payable if his train had been given to him at Alyth Yard. In the end, the Arbitrator is compelled to conclude that merely taking possession of his train at Keith, after deadheading from Alyth, does not constitute performing work enroute, in the sense of an extra assignment to pick up or set off cars, as contemplated by the Conductor-Only provisions of the agreement, including article 11(h).

For these reasons the grievance must be dismissed.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR