

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2783

Heard in Calgary, Tuesday, 12 November 1996

concerning

CANADIAN PACIFIC RAILWAY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Claims of Trainperson K.D. Holmes, Moose Jaw, Saskatchewan, when run off the subdivision to which he was regularly assigned.

JOINT STATEMENT OF ISSUE:

On June 1, 1993, a shortage of trainpersons existed in the West Pool at Moose Jaw. In view of this shortage, Trainperson K.D. Holmes, who was regularly assigned to work in the South Pool, was required to work in the West Pool as a trainperson under the provisions of article 34, clause (b) of the collective agreement. After arrival at the objective terminal, Swift Current, Saskatchewan, Trainperson Holmes was held pursuant to article 14(j), clauses a) and c) of the collective agreement, to be worked return home to Moose Jaw as a required trainperson.

During the period held at Swift Current, four trains left Swift Current enroute to Moose Jaw operated Conductor-Only. Trainperson Holmes put forth run-around claims for each of these trips claiming 50 miles when not deadheaded home on the first available train pursuant to article 34, clause (d). These claims were denied by the Company and were grieved by the Council.

The Council's position is that article 34, clause (d), specifically requires that a person utilized under the provisions of clause (b) of article 34 will, on arrival at the objective terminal, be deadheaded back to their own territory on the first available train. As this was not done in this particular case, it is the Council's position that Conductor Holmes is entitled to the four run-arounds as claimed.

The Company has declined the claims.

FOR THE COUNCIL:

(SGD.) J. K. JEFFRIES
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. SEENEY
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

S. Seeney	– Manager, Labour Relations, Calgary
R. E. Wilson	– Director, Labour Relations, Calgary
M. E. Keiran	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
R. S. Smith	– Labour Relations Officer, Calgary
J. C. Copping	– Labour Relations Officer, Calgary

And on behalf of the Council:

B. McLafferty	– Vice-General Chairman, Moose Jaw
L. O. Schillaci	– General Chairman, Calgary

J. K. Jeffries
D. H. Finsson

– Vice-General Chairman, Cranbrook
– Secretary, Saskatoon

AWARD OF THE ARBITRATOR

The material establishes that Trainperson Holmes was set up as a regular conductor in the South Pool at Moose Jaw. Because of an emergency need he was properly forced to service on the West Pool to Swift Current. It is the position of the Council that when at the away-from-home terminal of Swift Current, Trainperson Holmes was entitled to the benefit of article 34 of the collective agreement, and should have been deadheaded home on the first available train or, alternatively, assigned to work homeward on a first-in first-out basis. It submits that the Company could not hold him at that location for service on a possible later train, which in fact did not materialize, and thereafter deny his run-around claims.

Article 34 of the collective agreement provides as follows:

34 TRAINMEN TEMPORARILY TRANSFERRED

(a) A trainman will not be temporarily transferred from one seniority district to another except in case of shortage of men on that district, and the junior man will be sent and shall go, unless senior man wishes to go. Trainman will be notified of such transfer at his home terminal and given the necessary time to prepare for such transfer.

(b) A trainman or crew will not be run off subdivision or subdivisions to which regularly assigned except in case of shortage of a trainman or crew on another subdivision, or in case of emergency.

Shortage of a trainman or crew will not be considered to exist when there is a trainman or crew available that could be moved to the point required without incurring delay to operations.

(c) A trainman or crew run off territory to which regularly assigned on to another seniority territory under the provisions of Clause (b) will be deadheaded back to the territory to which regularly assigned.

(d) A crew run off territory to which regularly assigned on to another territory within their seniority district under the provisions of Clause (b) will, on arrival at the objective terminal be deadheaded back to their own territory on the fist available train, or if crews are not available at the objective terminal to handle train required to be run, they will work back to their own territory on a first-in first-out basis.

[emphasis added]

It is not disputed that the Swift Current Subdivision, to which the grievor was forced, was Conductor-Only territory. In that circumstance the Company submits that it was entitled to hold Mr. Holmes for subsequent service, to a limit of five hours beyond the time of the return of the conductor with whom he arrived at Swift Current, as contemplated under the provisions of article 14, clause (j), sub-clauses a) and c) of the collective agreement which provide as follows:

(j) On territories on which Conductor-Only train operation has been implemented pursuant to article 9A, clause 9, conductors and trainpersons may, notwithstanding the provisions of clause (a) hereof and their assignment out of the home terminal, be used independently from the away-from-home terminal in the following circumstances:

a) A brakeperson, provided he is rested, may be called in advance of the conductor with whom he arrived to fill a required brakeperson's position. A brakeperson may also be held beyond the order time for the conductor with whom he arrived to fill a required brakeperson's position. Upon return to the home terminal, the brakeperson will take his regular turn.

...

- c) When a brakeperson is withheld from his normal turn pursuant to (a) or (b) above, it will not be for a period exceeding 5 hours beyond the time the conductor with whom he arrived at the away-from-home terminal reports for duty.

The Company's representative submits that the foregoing provisions override the terms of article 34(d) of the collective agreement, which it characterizes as a more general provision which pre-existed the Conductor-Only agreement.

As a general rule, absent clear language to the contrary, boards of arbitration should strive to construe separate provisions of a collective agreement in a manner that avoids unnecessary contradiction, and allows such provisions to function in a complementary fashion, as should be the presumed intention of the parties. In the instant case the Arbitrator is not persuaded that terms of article 14(j) of the collective agreement must necessarily be construed as contradictory of those of article 34.

On its face, article 14(j) does not address the specific circumstance of a conductor or trainperson temporarily transferred from one seniority district to another or from one subdivision to which he or she has been regularly assigned to another subdivision. The language of that article can be taken to apply to conductors and trainmen who are not run off the territory to which they are regularly assigned. Indeed, there is nothing in the language of article 14(j) which would suggest that it contemplates the special needs or circumstances of such an employee. On the other hand, article 34 of the collective agreement clearly does.

For reasons which the parties best appreciate, they have fashioned special protections for persons run off their regular territory, to allow for their prompt return to their home terminal, whether by way of deadhead or, where there is a shortage of crews at the objective terminal, working their way back on a first-in first-out basis. It would appear that in the case at hand neither of those options was made available to the grievor. The Arbitrator is satisfied that the provisions of article 34 were intended to apply to the grievor in the circumstances disclosed, and that there is nothing in that provision which is necessarily contradictory to the provisions of article 14(j), which do not address the specific circumstance of an off-territory conductor or brakeperson.

On that basis I am satisfied that the grievance must be allowed. I am not persuaded, however, that the four run-around claims made by the grievor should be payable at more than the rate to which he would have been entitled had he been promptly deadheaded to his home terminal as a trainperson. The Company is therefore directed to pay the run-around claims at the trainperson's rate.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR