

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3031

Heard in Montreal, Thursday, 9 February 1999

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

The action of the Company in the use of Turnaround Combination Service (TCS) in assigned service at London, Ontario.

EX PARTE STATEMENT OF ISSUE:

Assigned Roadrailer crews were ordered in Turnaround Combination Service (TCS) at London, Ontario.

The Union appealed the action of the Company in applying the Turnaround Combination Service provision of Article 22 of the Collective Agreement to an assignment.

The Union requested that the practice be discontinued and that affected employees be compensated for resultant loss of wages.

The Company declined the Union's request.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

G. Chehowy – Manager, Labour Relations, Toronto

And on behalf of the Council:

D. A. Warren – General Chairperson, Toronto

D. Fielding – Local Chairperson, Toronto

AWARD OF THE ARBITRATOR

The issue in this dispute is whether roadrailer assignments operating between Melvindale, Michigan and Lampton Yard, Toronto are subject to the turnaround combination service provisions of article 22 of the collective agreement. The record discloses that for the purposes of implementing roadrailer service the parties entered into a special agreement dated March 11, 1991, establishing the terms and conditions under which roadrailer service would operate. One of the innovations of that service was conductor-only service, with permanent conductor assignments home terminalled at London. The roadrailer agreement itself makes no specific provision as to deadheading. Prior to the most recent amendment of the collective agreement it does not appear disputed that the deadheading provisions of the collective agreement, including the former article 22(a) were applied to employees in roadrailer service.

In the most recent round of bargaining and arbitration before Mr. Justice Adams the collective agreement was amended to create the new concept of turnaround combination service, essentially as a means of allowing the Company to achieve greater efficiencies in the reduction of deadheading costs. It does not appear disputed that to operate roadrailer service between Detroit and Toronto on a five day a week basis the Company is compelled to schedule four assignments which involve deadheading.

The thrust of the Council's position is that the provisions of article 22 of the collective agreement, which are the only provisions governing deadheading, generally contemplate unassigned service, and deal with circumstances which do not arise in assigned service, which would include roadrailer service between Toronto and Detroit. The Arbitrator has some difficulty with that submission. Firstly, as noted above, there is no other provision in the collective agreement governing deadheading beyond what is found in article 22. If that article should not apply to assigned service, on what basis do employees required to deadhead in assigned service get paid? In my view the Council's approach to this article is unduly restrictive, as plainly there are provisions within it which can apply beyond the circumstance of unassigned service, and by its own submission article 22(e) (Straightaway Service) should apply.

The position of the Council is difficult to accept in the face of the general wording of article 22 of the collective agreement. In the aftermath of the Adams award the parties negotiated the terms of their deadheading provision without making any specific reference to roadrailer service, or indeed to assigned service, so as to hive out any clear exceptions. In that context, it is difficult to understand how the general provisions of article 22 could be other than applicable to roadrailer service. While the roadrailer agreement itself provides that its terms supersede collective agreement provisions which are in conflict with it, as noted above there is no specific reference to the method of payment for deadheading within the roadrailer agreement itself. In these circumstances the Arbitrator cannot see upon what basis article 22 would not apply. While parts of the article do deal with expressly with unassigned service, the language concerning turnaround combination service does not, either expressly or implicitly, exclude assigned service.

Nor, from a purposive standpoint, is the Arbitrator persuaded that the Council's position is compelling. There is nothing inherent in the nature of the roadrailer service which, on its face, would appear to justify its being sheltered from the general intention of the Adams award with respect to rationalizing the payment of deadheading for running trades employees in all forms of freight and passenger service. There is nothing inherent in roadrailer service which has been brought to the Arbitrator's attention as implicitly justifying a departure from the normal deadheading rules now provided for within article 22 of the collective agreement. Nor does the fact that the roadrailer agreement contained a general "without prejudice and without precedent" clause which prevented it being specifically referred to in the proceedings before Mr. Adams change the principles which must apply. It is clear from a review of the Adams award that the learned arbitrator intended to fashion provisions of general application subject only to a period for identifying special hardship situations as provided in the note to article 22(q). There is no suggestion in the material before me that either of the parties identified the Toronto-Detroit roadrailer service as a candidate for hardship treatment or the payment of particular benefits.

In the result, the Arbitrator is satisfied that the Company was entitled, as it did, to order roadrailer crews in turnaround combination service at London. The grievance must therefore be dismissed.

February 12, 1999

(signed) MICHEL G. PICHER
ARBITRATOR