

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3280

Heard in Montreal, Tuesday, 10 September, 2002

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

### EX PARTE

#### **DISPUTE:**

Remedy payment of 500 miles to Conductor Thiffault.

#### **EX PARTE STATEMENT OF ISSUE:**

On June 19, 2002, Conductor Thiffault was working Train Q14911-17 Montreal to Toronto. At 1300 hours Conductor Thiffault filed a rest message with the Rail Traffic Control Centre under the provisions of article 51 of agreement 4.16 advising that he would require rest at 1600 hours.

The Union claims that the Company violated the reasonable intent of application of article 51 by holding Conductor Thiffault on duty until 1845 hours, 2 hours and 454 minutes beyond the time rest was due to commence. The Union, under a new provision of the collective agreement, submitted a grievance requesting that a remedy in the payment of 500 miles be issued to Mr. Thiffault.

The Company declined the Union's request.

#### **FOR THE UNION:**

#### **(SGD.) R. A. BEATTY** **GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

D. Laurendeau	– Manager, Human Resources, Montreal
J. Torchia	– Director, Labour Relations, Edmonton
B. Hogan	– Manager, Workforce Strategies, Toronto
B. L. Olson	– Director, Human Resources, Toronto
S. Landry	– Manager, Crew Management Centre, Moncton
J-J Lajoie	– Assistant Manger, Rail Traffic Control Centre, Montreal
M. Farkouh	– Superintendent, Montreal
O. Lavoie	– Transportation, Supervisor, Montreal

And on behalf of the Union:

R. A. Beatty	– General Chairperson, Sault Ste. Marie
G. Anderson	– Vice-General Chairman,
J. Robbins	– Vice-General Chairman,
G. Ethier	– Secretary,
R. Michaud	– Provincial Legislative Representative, Montreal

N. Beveridge	- Local Chairperson, Montreal
P. Vickers	- Vice-General Chairman, BLE
R. Caldwell	- Vice-General Chairman, BLE

### **AWARD OF THE ARBITRATOR**

This grievance involves the first application of Addendum No. 123, a letter of understanding dated December 13, 2001. It concerns the Union's claim concerning a violation of the rest provisions of the collective agreement in the treatment of Conductor Thiffault under the provisions of article 51 of the collective agreement.

The facts are not in substantial dispute. On June 19, 2002 Conductor Thiffault was called to operate train Q14911-17 from Montreal to Toronto, an extended run assignment with a maximum working time of twelve hours. After being on duty for nine hours Mr. Thiffault gave his three hour notice of his intention to book rest to the Montreal Rail Traffic Control Centre. It is common ground that at that point his train had not cleared Dorval. It does not appear disputed that among the options then available to the Company, it could have directed the grievor back to Montreal, his home terminal, to go off duty. However, the RTC directed Mr. Thiffault to deadhead by taxi from Dorval to Toronto, resulting in on duty time of fourteen hours and forty-five minutes, in violation of the rest provisions of the collective agreement.

Under the provisions of Article 85 Addendum 123 the Union submits that the Company violated the underlying intent of the booking rest provisions of Article 51. The Union's representative refers the Arbitrator to the document prepared by the Company as an explanation of the rest provisions dated January 15, 1986, and in particular the following paragraph:

It is incumbent upon the Company to ensure that trainman, who give proper notice of the desire to book rest, are relieved of duty either at a location where accommodations can be provided or at the home or away-from-home terminal by the time rest booked is due to commence, and even then, as soon as possible. In order to make the necessary arrangements to fulfill this requirement, a minimum of three hours notice is required.

As a remedy in the instant case the Union requests the Arbitrator to direct a penalty payment of 500 miles in favour of Conductor Thiffault.

Upon review of the materials filed the Arbitrator is satisfied that the case at hand is properly submitted under the provisions of Article 85 and Addendum 123 of the collective agreement. Having found a violation of the Collective Agreement I refer the question of remedy back to the parties for resolution.

The Arbitrator continues to retain jurisdiction in the event that the parties should be unable to agree as to the appropriate remedy.

September 18, 2002

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