

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3794

Heard in Montreal, Thursday, 16 July 2009

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The improper application of Turnaround Combination Service (TCS) by the Company, on January 28, 2005, a violation of Article 24 (CTY) and Article 5 (LE).

JOINT STATEMENT OF ISSUE:

On January 28, 2005, at 0230 Conductor D.R. Halfyard and Locomotive Engineer M.H. Trott were ordered out of Brandon MB in Turnaround Combination Service to deadhead to the away from home terminal Broadview SK, to work train 672 to the intermediate point of Virden MB, where they left the train for another crew and then deadheaded via taxi to Brandon, MB, reporting off duty at 09:30.

On January 23rd, 2006, the Union advanced a Policy Grievance on behalf of the locomotive engineers and trainpersons of Division 667 account a violation of the relevant clauses of the Collective Agreements.

The Union contends that the provisions of Article 24 (CTY) and Article 5 (LE) of the respective current collective agreements do not provide for this type of call. The language of the collective agreements refers to either working or deadheading from the home terminal to the away-from-home terminal and/or from the away from home terminal to the home terminal. Further, the Union contends that the Company's application of TCS service is contrary to CROA 2905.

The Union has requested that the Company cease the practice of ordering crews in TCS to work to an intermediate point. The Union further requests compensation regarding the claims held under Abeyance Code BR01 and any timely grievances originating out of Kenora that are the same as the Instant case.

The Company has denied the Unions request.

FOR THE UNION:

(SGD.) D. W. OLSON
GENERAL CHAIRMAN

(SGD.) D. R. ABLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. A. GARCIA
FOR: ASSISTANT VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

- C. Ayton – Labour Relations Officer, Calgary
- D. Freeborn – Manager, Labour Relations, Calgary

And on behalf of the Union:

- D. R. Able – General Chairman, Calgary
- D. W. Olson – General Chairman, Calgary
- G. Edwards – Sr. Vice-General Chairman, Revelstoke
- D. Fulton – Vic-General Chairman, Calgary
- H. Makoski – Vic-General Chairman, Winnipeg
- D. Edwards – Vice-General Chairman, Medicine Hat
- L. O. Schillaci – Witness (General Chairman, UTU, ret'd)

AWARD OF THE ARBITRATOR

The parties are in profound disagreement as to the limitations of Turnaround Combination Service (TCS). That form of service was the result of the decision of the Mediation/Arbitration Commission established pursuant to the *Maintenance of Railway Operations Act*, 1995 S.C. 1995, c.6. The purpose of the new service was to relieve the Company from an undue burden of wages for employees deadheading and held at the away from home terminal and, from the standpoint of the employees, to reduce the time that they are held away from home. The following appears at page 95 of the award of Mr. Justice Adams, Chair of the Mediation/Arbitration Commission:

For turnaround combination service where deadheading is by other than freight train, an employee will be paid for deadheading on a per minute basis with no minimum and, provided that employees are returned to their home terminal and off duty within 12 hours of reporting for duty at that same terminal, rest as provided for by the agreement shall not be booked within the 12 hours.

This Turnaround Combination Service will not be subject to the 100-mile terminal limit otherwise provided for and any combination of service and deadheading will be permitted within it.

The Company submits that the foregoing passage allows the TCS assignment to be structured so that, as occurred in the instant grievance, a crew can be deadhead

from its home terminal to the away from home terminal, be immediately placed into work service at the away from home terminal, working back towards the home terminal but only as far as an intermediate point. It submits that it can then deadhead the crew from the intermediate point back to the home terminal in accordance with the pay scheme for TCS service.

The instant grievance arises from the assignment given to Conductor Halfyard and Locomotive Engineer Trott on January 28, 2005. They were called into TCS service on the Broadview Subdivision between their home terminal of Brandon and the away from home terminal of Broadview. They deadheaded the entire distance to the away from home terminal at Broadview, where they immediately operated train 672-022 back towards the home terminal, but not all the way to that destination. They were instructed to leave their train at the intermediate point of Verden on the Broadview Subdivision. Having secured their train at Verden they were then deadheaded to Brandon. It is common ground that the assignment so structured yields reduced earnings to the crew by reason of the lower payment which applies to the longer deadheading segments of their assignment.

The Union maintains that the agreement negotiated following the decision of the Mediation/Arbitration Commission in 1995 in fact requires that crews in TCS service must either deadhead or work entirely to or from the away from terminal and that the "planned failure" of a full working trip between those two terminal points, namely stopping the working portion at an intermediate point, is not permitted or contemplated

by the parties' agreement with respect to TCS. As part of its submission the Union relies, in part, on the prior decision of this Office in **CROA 2905**.

Having carefully considered the submissions of the parties, and recognizing the importance of this issue for both sides, the Arbitrator is compelled to accept the Union's interpretation of the limitations of TCS assignments. Firstly, it must be noted that having established the concept of TCS, Mr. Justice Adams remitted the matter into the hands of the parties to negotiate the more precise terms of that service within the framework of the collective agreements. The parties did so, under both agreements relating to trainpersons and locomotive engineers, respectively. It does not appear disputed that the parties agreed upon the language in respect of TCS through a Memorandum of Agreement dated July 14, 1995. It is therefore that document, and not the decision of the Commission, which now becomes the primary instrument to construe the ultimate agreement of the parties.

With respect to the intention of the parties as to the operation of TCS the Union points to a passage in a message issued by the late Labour Relations Officer for the Company, Mr. Brian Scott, on July 19, 1995, immediately following the negotiation of the memorandum of agreement. Mr. Scott, a respected contributor to the jurisprudence of this Office, wrote, in part, as follows:

The revised provisions of the collective agreement now permits employees to be called at their home terminal in turnaround combination service which involves **deadheading to or from an away from home terminal either before or after working service** respectively as one continuous tour of duty regardless of distance from the home terminal.

(emphasis added)

The record reveals that further negotiations and agreements were made with respect to method of pay issues, as reflected in separate Memoranda of Agreement dated March 10 and 24 of 1997. Page 5 of the first memorandum provided the following with respect to the method of pay:

- (c) When deadheading precedes working service, employees in TCS will be paid deadheading on a continuous time basis until working service commences. Working service will commence immediately upon arrival at the away-from-home terminal. First-in/first-out continues to apply.

NOTE: Modifications made to the TCS work rule will be changed in the current Collective Agreements to reflect these understandings.

- (d) Employees in TCS who complete a working trip between the stations listed in Appendix A-1 will receive the fixed mileage, plus the hourly rate for the deadhead portion of their tour of duty.
- (e) Failing to complete a TCS tour of duty within 12 hours will result in the deadhead penalty payment.
- (f) Employees in straightaway or TCS, who fail to complete a working tour of duty between the stations listed in Appendix A-I, or those working in any other service for which no flat rate has been established, will be compensated in accordance with the present dual based method of payment.

Ultimately the TCS provisions were folded into the terms of the collective agreements, as reflected in articles 24.07 through 24.18 of the collective agreement governing conductors and articles 5.02(7) through 5.02(18) of the collective agreement of the locomotive engineers. The provisions of article 24.15 and 5.02(15) of the two collective agreements read as follows:

When deadheading precedes working service, employees ordered in TCS will be paid deadheading on a continuous time basis until working service commences. Upon arrival at the away-from-home terminal the crew is to contact the Rail Traffic Controller advising of the time of arrival. Working service will commence upon arrival at the away from home terminal keeping the principles of the first in, first out rules and the content of Clause 24.08 intact.

When a crew is called in TCS to deadhead, preceding or following working service and is compensated on the basis of the Fixed Mileage Basis of Pay rules, claims on the minute basis, account a TCS crew deadheading in the same vehicle as another crew, due to the thresholds being exceeded, shall be paid by the Company rather than drawing on the buffer fund.

When deadheading follows working service the crew will remain in working service until deadheading commences. When working service precedes deadheading, switching will be limited at Montreal, Toronto, Thunder Bay, Winnipeg and Calgary to the work, which can currently be performed pursuant to Clauses 10.02(2), 10.02(4), 12.04 and 12.09 of this agreement.

The working portion of the TCS claim will be paid on the basis of the Fixed Mileage Method of Pay for that particular trip, provided the crew completes the working tour of duty according to the Fixed Mileage Method of Pay rules.

If the working portion is not completed, or if there is no Fixed Mileage Method of Pay established for the tour of duty, then payment for the working portion of the trip will be in accordance with the dual method of calculating pay. Employees will be paid for the working service on a continuous time basis from the time working service commences until departure from the OMTS or designated point. For the purposes of the application of Conductor-Only train operations, the turnaround point will be considered as a stop enroute. When switching is performed crew will be compensated for the time switching at the turnaround point with a minimum payment of one (1) hour.

(Emphasis added)

When reference is had to the facts, the language of the agreements and the history of the TCS provisions as incorporated into the collective agreements, the Arbitrator is left in substantial doubt as to the merits of the Company's position in this grievance. Firstly, from a historical standpoint it is arguable, as the Company submits, that the language used by the Adams Commission with respect to the possibility of "any combination of service and deadheading" within TCS would lend itself to the Company's interpretation. However it must be appreciated that the text of the Adams award is no longer the governing document for the purposes of this dispute. As noted above, the parties themselves fashioned their own understanding and agreement with respect to the meaning of TCS and the methods of payment which would attach to it. That is reflected in the memoranda of agreement and the current provisions of articles 24 and 5 of the two collective agreements to this date.

Such historic evidence as is available to the Arbitrator does tend to support the position advanced by the Union. Apart from the excerpt from the communication of Mr. Scott, reproduced above, the Company did submit a brief to this Office in **CROA 3031**. In that case the Union grieved the assignment of roadrailer service in Southern Ontario under the TCS system. In its presentation to the Arbitrator the Company gave the following description of Turnaround Combination Service:

Turnaround Combination Service: Deadhead Home Terminal A to Away From Home Terminal C, then work Away Terminal C to Home Terminal A. Deadhead payment is on the minute basis with no minimum payment. The deadhead and work are considered as a single tour of duty.”

Although the Union was not successful in that grievance, the award itself recognizes that TCS, as described in the Company’s brief and as accepted by the Union for the purposes of this grievance, does afford the Company significant advantages in the reduction of the overall cost of deadheading.

The language of the memorandum of agreement of March 10 is also instructive. Sub-paragraph (c) of that memorandum deals with the circumstance where deadheading precedes working service. It states, in part:

(c) When deadheading precedes working service, employees in TCS will be paid deadheading on a continuous time basis until working service commences. **Working service will commence immediately upon arrival at the away-from-home terminal. ...**

(emphasis added)

The foregoing would suggest, as the Union argues, that what the parties agreed to was that TCS would involve either deadheading or working the entire distance between a home terminal and an away from home terminal, in either direction. They did

not, it would appear, contemplate that either deadheading or working service could be interrupted at an intermediate point between the two terminals.

The same concept is reflected in the provisions of articles 24.15 of the conductors' collective agreement and 5.02(15) of the locomotive engineers agreement where it is stated, in part "Working service will commence upon arrival at the away from home terminal ..." dealing with the circumstance when deadheading precedes working service. It is also significant to note that the agreement of March 10, 1997 speaks in clear terms of employees in TCS performing a "working trip between the stations listed in Appendix A-1". That would not appear consistent with working to or from an intermediate point.

It is difficult for the Arbitrator to reject the argument of the Union with respect to the language which the parties themselves adopted to describe TCS following the award of the Adams Commission. The general thrust appears to be that deadheading can precede working service or it can follow working service. There is no suggestion that it can do both within a single assignment, or that the form of service can be broken at an intermediate point.

Additionally, the Arbitrator is satisfied that the decision of this Office in **CROA 2905** is a compelling element in the resolution of this grievance. That award, issued in November of 1997, confirms that under TCS the Company could not structure the assignment of a crew by deadheading them from their home terminal to an intermediate point, and thereafter having them commence their work onwards to the away from

home terminal and then deadheading them home from the away from home terminal back to their home terminal. In that award the arbitrator commented:

Articles 5(b)(7) to (17) inclusive deal with Turnaround Combination Service. These articles appear to speak exclusively in terms of either working or deadheading entirely to the away from home terminal and/or from the away from terminal.

As should be evident, at that point in time this Office effectively declared that between the home terminal and away from home terminal in TCS crews are either to deadhead the entire distance or work the entire distance. The circumstances in **CROA 2905** are a mirror reflection of the instant grievance, where the break in deadheading and the commencement of work is at an intermediate point on the return home. In the Arbitrator's view that makes no difference in substance. Clearly, the principle must be the same.

It is therefore significant to note that the parties were on notice, from 1997 onwards, with respect to the interpretation and meaning of the TCS provisions. The fact that they renewed their collective agreements a number of times without any amendment must be taken as confirming that they accepted the interpretation of this Office rendered in that case. While the Arbitrator appreciates that the Company in good faith believed that a different circumstance might apply to the trip from the away from home terminal back to the home terminal, there is no language in the collective agreement, nor in the history of the parties' treatment of TCS, to suggest that that was ever the agreed intention of both the Company and the Union. Indeed, it would appear that while there may have been some mixed practice, there were many grievances over the years in relation to the severing of work within the TCS assignment at a mid-point

between terminals, the issue which has finally come forward for determination in this grievance.

In the result, the Arbitrator is compelled to sustain the grievance. It being understood that a number of other claims are held in abeyance pending the decision in this award, the Arbitrator deems it appropriate to issue the declaration of the interpretation of TCS as related above, direct that Conductor Halfyard and Locomotive Engineer Trott be compensated as claimed by the Union, and that all other grievances and claims, including some identified as being out of Kenora, be settled on similar terms. Given the good faith approach of the Company to these issues the Arbitrator does not consider it necessary to issue a cease and desist order, in the expectation that the Employer will comply with the result of this award. The Arbitrator retains jurisdiction in the event of any dispute between the parties concerning the interpretation or implementation of this award.

July 20, 2009

(signed) MICHEL G. PICHER
ARBITRATOR