

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

**CASE NO. 3867**

Heard in Montreal, 11 February 2010

Concerning

**ONTARIO NORTHLAND MOTOR TRANSPORTATION COMMISSION**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Cancellation of regular bus service, and replacement with taxis.

**JOINT STATEMENT OF ISSUE:**

On October 1st of 2008 Ontario Northland Motor Coach Services (a division of ONTC) in order to reduce costs, reduced service to some communities. Shortly thereafter the ONTC began operating a taxi shuttle service between Kirkland Lake (a community which just had service reduced) and Kenogami to connect with the passing bus that had previously been servicing Kirkland Lake. On November 16th, 2008 bus service was again reduced between Driftwood and Cochrane and replaced with taxis. It is the Union's contention that removal of bus service and replacement with taxis is a violation of collective agreement article 33 – Manning of system vehicles.

The Company disagrees with the Union and maintains that the use of taxis to provide transportation services for its customers has been practised in the past and is not a violation of article 33.

**FOR THE UNION:**  
**(SGD.) T. WENTZELL**  
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**  
**(SGD.) G. ZABARELO**  
**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

G. Zabarelo – Manager, Labour Relations, North Bay  
C. Sutton – Vice-President, Passenger Services, North Bay

There appeared on behalf of the Union:

R. A. Beatty – Transition Director, Sault Ste. Marie  
T. Wentzell – General Chairman, North Bay  
M. McMahon – Vice-General Chairman, North Bay

### AWARD OF THE ARBITRATOR

The record reveals that by reason of the implementation of cost savings, the Company reduced services to the towns of Kirkland Lake and Cochrane. Because of community reaction to its decision, it thereafter implemented on demand taxi service between Kirkland Lake and Kenogami as well as between Cochrane and Driftwood, thereby allowing passengers in Kirkland Lake and Cochrane to connect on to the Company's motor coach services. The Union alleges that the Company's actions constitute a violation of article 33 of the collective agreement entitled "Manning of System Vehicles". That article reads as follows:

**33.1** All motor coach vehicles owned or operated by the System, while in Ontario Northland service (regular, charter, extra or additional service) will be manned by employees holding seniority rights under the terms of this agreement. However, this is not intended to preclude the use of leased equipment with driver for a single trip in an emergent situation when System Bus operators and/or equipment is not readily available.

The position of the Union is that in effect the Company now "operates" the taxi on demand service, and that the taxis so utilized effectively become "motor coach" vehicles within the meaning of article 33.1 of the collective agreement. With respect, the Arbitrator cannot agree. The collective agreement, which has existed for many years between the parties, deals specifically with the terms and conditions of employment of bus drivers working for the Company in its motor coach service. The cover of the collective agreement refers to them as "Motor Coach Operators". Lest there be any doubt, it is notable that article 33.1 itself refers to "System Bus operators", indicating that single trip exceptions can be made where such bus operators are not available. Article 33.1 is about bus operators.

It is, with respect, a stretch to argue that independently owned taxis, hired on an as needed basis to ferry passengers to and from Kirkland Lake and Cochrane, are either “motor coaches” or can be truly be said to be “operated” by the Company. Very simply, what has occurred is that the Company has decided to no longer service the locations of Kirkland Lake and Cochrane, and has, largely as a courtesy to its clients, provided a system to facilitate their access to motor coach transportation by means of short links by taxis which are privately owned and operated in Kirkland Lake and Cochrane. The Arbitrator cannot see on what basis the facts so described can be characterized as the manning of system vehicles by other than employees covered by the collective agreement. The motor coaches or buses operated by the Company continue to be operated by bargaining unit members. Nothing in the arrangement established by the Company can fairly be said to be in violation of article 33 of the collective agreement.

Although it is unnecessary to base the decision on an alternative ground, it also does appear that on a number of occasions in the past the Company has used similar arrangements, apparently without any objection from the Union. It appears that taxis on demand have variously been utilized, without any grievance, since 1995. While the Arbitrator need make no comment about the doctrine of estoppel, the past practice does indicate that the parties understood article 33 as not prohibiting the legitimate use of taxi on demand service.

For all of the foregoing reasons the grievance must be dismissed.

February 26, 2010

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