CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 231

Heard at Montreal, Wednesday, September 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Brakeman L.W. Thomson of Capreol, April 28, 1969.

JOINT STATEMENT OF ISSUE:

On April 27, 1969 Spare Brakeman L.W. Thomson worked as an extra man in the capacity of Flagman on passenger train No. 107, from Capreol to Hornepayne where he went off duty at 1725 hours. On April 28, 1969 he was called as an extra man to work as Flagman, on passenger train No. 106 from Hornepayne to Capreol. He reported for duty at Hornepayne at 1240 hours and was released from duty at Capreol at 2055 hours.

Brakeman Thomson was paid for the trip on train No. 107 in accordance with the applicable Agreement provisions. For the trip on Train No 106 he was paid 314 miles at the passenger rate. He was also paid 61 miles at the passenger rate as time held at other than his home terminal under the terms of the sixth paragraph of Article 37 of Agreement 4.16.

On the grounds that he should have been returned from Hornepayne to Capreol deadhead on freight train No. 218, which left Hornepayne at 2045 hours April 27, and arrived Capreol at 0350 hours, April 28, Brakeman Thomson submitted a time return claiming the difference between the 314 miles earned at passenger rate on train No. 106 and the 296 miles at the through freight rate for the deadheading which he alleged should have taken place.

On the grounds that he was not properly returned from Hornepayne to Capreol, Brakeman Thomson alleged that he was run-around on the Capreol spare board by eleven brakemen who arrived Capreol, and were placed in turn on the spare board, between the time train No. 218 arrived and the time that he arrived on train No. 106, and he submitted another time return claiming the eleven run-around payments for a total of 550 miles at the through freight rate.

The Company declined payment of all the claims. The Union contends that Brakeman Thomson is entitled to payment of these claims in order to compensate him for the earnings he lost because of the Company's action, which, in the Union's opinion, constituted a violation of the sixth paragraph of Article 37 of Agreement 4.16.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. ROBT. ASHMAN	(SGD.) K. L. CRUMP
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
W. D. Connon	– Superintendent Transportation, Capreol
W. J. A. Daly	– Assistant Superintendent, Capreol

And on behalf of the Brotherhood:
G. R. Ashman General Chairman, Toronto

AWARD OF THE ARBITRATOR

The final paragraph of Article 37 of the collective agreement is a follows.

> **37** A trainman used as an extra man on a passenger train will be returned deadhead on first available train, unless required to work back on another passenger train within sixteen (16) hours of his arrival. If held longer than sixteen (16) hours Article 25 will apply.

On the facts set out in the Joint statement of issue, it is clear that the provisions of that paragraph are applicable in this case. The grievor was used as an extra man on a passenger train. He was not required to work back within sixteen hours of his arrival. Since this was not the case, it plainly follows that he was entitled to be returned deadhead on the first available train. Such a train was available from Hornepayne at 2045 hours on April 27.

The last sentence of the paragraph referred to provides for the application of Article 25 in cases where the employee is held longer than sixteen hours. Article 25 provides for payments to employees held away from home terminal. Certainly an employee, entitled to be returned deadhead on the first available train, may in some situations be held longer than sixteen hours. He is entitled to be paid in those circumstances, the payment being made pursuant to Article 25. He does not thereby lose his entitlement to be returned deadhead on the first available train. That is a right to which he is plainly entitled by Article 37, and which is only lost if he is required to work back on another passenger train within sixteen hours.

In my view, there is no ambiguity in the last paragraph of Article 37. The first sentence sets out a general right of trainmen used as extra men on passenger trains, and that general right is subject to one exception. The second sentence sets out a provision for payment to such trainmen in certain circumstances, and there is no inconsistency between these sentences, nor ambiguity in the provisions read as a whole. The past practice of the parties is not properly to be considered where the provisions of the agreement are clear.

It was acknowledged by the Union that the application of this article might in some cases lead to “cross deadheading”, and for this reason the company argued that the provisions should not be construed so as to lead to an absurdity. In this the company relied on the well-known principle of interpretation, set out in a number of arbitration awards. I agree with that principle, but I am unable to see in the provision in question, construing it in the grammatical and ordinary way, any absurdity or inconsistency with the rest of the agreement. While the company may consider “cross deadheading” to be absurd in the sense of being inefficient, it cannot be said to be “absurd in itself, and I was referred to no provision of the agreement which would be contradicted or rendered nugatory by the straightforward interpretation of the article. “Cross deadheading”, perhaps, might not seem so absurd to the employee relying on his right of expedited return set out in Article 37.

Certainly the last sentence of article 37 contemplates that in some circumstances an “extra man” may be held away from home terminal for more than sixteen hours. As I have indicated, however, this does not mean that he is thereby deprived of his right to be deadheaded home on the first available train. There is only one exception to that right, and it is plainly set out. There may be a number of reasons why an extra man would be held for more than sixteen hours, but these reasons are immaterial to the existence of a right to be paid. I agree with the company that the application of this last sentence is not limited to occasions of “accident, late operation, or where no return movement of any class of service is available prior to the expiration of sixteen hours”. The fact is there is no limitation on the application of the last sentence of the article. What is important for this case however, is that the last sentence does not modify or alter in any way the right conferred upon employees by the first sentence. That is a right to which the grievor was entitled, in the circumstances of this case.

The grievor was entitled to be returned deadhead on the first available train. This was not done, and as a result the grievor lost the opportunity to respond to other calls which would have been available to him, had the agreement been complied with. It was said by the union that he was run-around eleven times, but this is only to say that on each of eleven occasions he was unavailable due to the company’s default. If he had been available, he would not in fact have been able to respond to all eleven calls. That would require his being in several different places at the same time, and that would indeed be an absurdity. In my view, the grievor is entitled to recover for being run-around once.

For the foregoing reasons, the grievance must succeed. The grievor is entitled to be paid the difference between the amount he was paid for his return trip on train No. 106, and the amount he would have been paid had he returned deadhead. He is also entitled to be paid fifty miles for one run-around.

(signed) J. F. W. WEATHERILL
ARBITRATOR