CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 534

Heard at Montreal, Tuesday, January 13th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Various time claims in favour of Locomotive Engineers M.T. Campbell and J.E. Cunningham of Belleville and S.K. Wilson and L. McCallum of Toronto, regularly assigned to Turbo Trains No. 62-63, claiming payment to and from home during their assignments, lay-over in Montreal, under Article 66 - Deadheading.

JOINT STATEMENT OF ISSUE:

Effecting October 27, 1974 assignments for the Turbo Trains No. 62-63 operating without a change of crew between Montreal and Toronto were advertised calling for two crews from the 4th Seniority District and one crew from the 3rd Seniority District.

Because of the operating schedule of the trains, the assignments all have nine days' lay-over in Montreal and two days' lay-over in Toronto.

The claimants from the terminals of Belleville and Toronto assigned to the Turbo Train claimed payment to and from Montreal when returning home during their assignments' nine-day lay-over in Montreal under Article 66.

The Company declined payment.

FOR THE EMPLOYEES:

(Sgd.) J. B. ADAIR
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – System Labour Relations Officer, Montreal
J. R. Gilman – Regional Labour Relations Officer, Toronto
M. Delgreco – Labour Relations Assistant, Montreal
E. B. Roach – Area Trainmaster, Toronto

And on behalf of the Brotherhood:

J. B. Adair – General Chairman, St. Thomas
W. D. McClurg – Legislative Representative, Toronto
E. J. Davies – Vice President, Montreal
V. Downey – 1st Vice General Chairman, Hamilton

AWARD OF THE ARBITRATOR

The Company operates two Turbo trains daily each way between Toronto and Montreal. Each train is manned by two engineers. An agreement between the parties provides specifically for the seniority districts from which the crews are to be drawn, for the non-stop run is between a terminal in seniority district number 3, and a terminal in seniority district number 4.

The schedule of crew assignments for the "afternoon" Turbo train is not the same as that for the "morning" Turbo, Trains 62 and 63, which is in issue here. There are, as the agreement between the parties contemplates, three crews assigned to cover the runs of Trains 62 and 63. One of these crews consists of two engineers whose home terminal is Montreal, in the 3rd seniority district. The other two crews are each likewise composed of two engineers, and these are the grievors, whose home terminals are Toronto and Belleville, in the 4th seniority district.

Bulletins advertising these three assignments were issued in September, 1974, to take effect on Sunday, October 27, 1974. The assignments, which are regarded as desirable ones, were generally filled by the senior qualified employees entitled to bid. The schedule for the three assignments, which was posted with the bulletin, shows that each assignment operates alternatively Train 62 or Train 63 over a period of five consecutive days. There are then two days off, and then five more consecutive days. There are then nine days off, and then the cycle begins again.

One drawback to these assignments, at least from the point of view of employees in seniority district No. 4, is that each of them involves a two-day layover in Toronto and a nine-day layover in Montreal. No claim is made in respect of the Montreal crews, who must lay over two days away from their home terminal, but in this grievance it is claimed that the Toronto and Belleville engineers should be paid for deadheading from Toronto to Montreal at the start of the cycle and from Montreal to Toronto at the beginning of the nine-day layover. The assignments begin and end in Montreal. It should be added that the claim is one for payment of time, the employees apparently being entitled to travel to and from the assignment on rail passes.

The particular issues in dispute in this case are whether the Toronto and Belleville employees in question are required or entitled to "deadhead" from Montreal to Toronto during the nine-day layover, and if so whether they are entitled to pay therefor. Another way of putting the issue may be as follows: did the Company violate the collective agreement in establishing an assignment on which Toronto and Belleville employees might bid and which provided for a nine-day layover in Montreal without deadheading rights? It is my view that employees did not waive any right to claim deadheading pay simply by applying for such assignments. It should also be noted that employees would not be on duty during their layover period. There was no restriction on their movements during that time. Finally, it is to be observed that there do not exist in this case the very special circumstances which in **Case No. 506**, where the decision was limited to those particular circumstances.

The Union relies on Article 66 of the collective agreement, which deals expressly with the matter of deadheading. That article is as follows:

Article 66 – Deadheading

66.1 Deadheading or travelling passenger on railway business with the proper authority will be paid for based on the following:

66.2 Deadheading paid separately from service will be computed on the basis of miles or hours whichever is the greater, with a minimum of 100 miles, overtime pro rata, at the minimum rate applicable to the train on which the locomotive engineer travels.

66.3 When deadheading is coupled with service paid for at road rates, such deadheading time and any dead time will be taken into account with the time occupied in other service when computing overtime, and the time or mileage will be paid for at the highest rate applicable to any class of service performed with a minimum of 100 miles.

66.4 When deadheading is coupled with service paid for at yard rates, such deadheading time and any dead time will be paid for separately from the time occupied in yard service, miles or hours whichever is the greater. If deadheading is performed on a passenger train, it will be considered as passenger service, and if on a freight train as freight service.

66.5 Locomotive engineers deadheading to exercise seniority rights or returning after having done so, or as a result of the application of Article 108 will not be entitled to compensation therefor. Deadheading in connection with relief work which locomotive engineers have bid in or claimed on seniority basis, shall not be paid for, but when not so bid in or claimed and locomotive engineers are ordered by the Railway to deadhead any such deadheading shall be paid for, except where locomotive engineers are forced to fill an assignment due to no applications being received.

66.6 When a locomotive engineer is ordered to deadhead on pay, the Company will provide or arrange for transportation. When rail or public transportation is not available and a locomotive engineer is authorized to use his private automobile, he will be reimbursed at the rate of 15 cents per mile for the miles traveled via the most direct highway route.

Here the grievors were "travelling passenger", and it may be assumed for purposes of this decision (but without so deciding) that they were "on railway business". I think it is doubtful that their deadheading should be so characterized within the meaning of Article 66, but it is not necessary to decide the question here. Further, I would have no hesitation in saying that if the grievors were "travelling passenger on railway business" on these occasions, then they would be doing so "on proper authority", even if no express direction were issued. But even if, for the purpose of this case, the grievors travel to Montreal to take up their assignment and to Toronto during their days off is to be considered as deadheading within the meaning of Article 66.1, the question is whether they were to be paid for that time. The other subsections of Article 66 set out the bases for such payment, and none of them supports the claim. Article 66.2 sets out the computation of pay for deadheading which is paid separately from service, it does not deal with the prior question whether in any particular case deadheading is to be paid for. Article 62.3 clearly does not apply, as there is no question here of deadheading being "coupled with service paid for at road rates". Likewise, and for similar reasons, it is clear that Article 62.4 does not apply.

In my view, Article 66.5 has no application. If it did, of course, it would act to deny the claim, since it provides (insofar as it might be material) that engineers deadheading "to exercise seniority rights" would not be entitled to compensation. It is only in an extended and strained sense of the words, however, that the grievors might be said to be exercising their seniority rights in going to and from an assignment to which their seniority rights – as well as other attributes – had entitled them. It might be thought however, that the case of an employee deadheading to take up an assignment in the exercise of seniority rights would have, from the point of view of equity, at least as good a claim as the employee travelling to the start of his assignment, or returning from it, in the normal course. Thus, while the grievors are not denied compensation by the operation of Article 66.5, the conclusion could not properly be drawn that they are therefore entitled to compensation.

Article 66.6 deals with the case where an employee is ordered to deadhead on pay. It does not say that an employee should be ordered to deadhead in any particular case, nor does it deal with entitlement to pay as such (and that is what is in issue here), but it requires that in such cases, transportation shall be provided. In the instant case the question is not one of transportation, but of general entitlement to pay, and that is not a matter with which Article 66.6 deals.

From the foregoing, it can only be concluded that Article 66 does not provide for payment for deadheading in the circumstances in issue here. I was not referred to any provision of the agreement which would lead me to conclude that the assignment was improper. There seems to have been no grievance over the bulletin itself, in that it did not provide for the assignments on which employees on the 3rd seniority region might bid, that they would begin and end with a deadhead trip between Toronto and Montreal. There are, it may be observed, other examples of assignments which do not begin at an employee's home terminal and in which he may not be entitled to deadhead on pay to begin the assignment. The operation of the "afternoon" Turbo Trains involves assignments which start in Toronto but terminate in Montreal. In those cases, it seems, there is provision for employees to deadhead, on pay, back to the starting terminal.

In certain cases, the parties have made agreements respecting runs beginning at a terminal other than an employee's home terminal, and have provided for compensation for deadheading. The agreement relating to Turbo Train operation does not provide that employees shall be compensated for deadheading to or from an away-from-home terminal. It does provide, in paragraph 1 that engineers stationed in Belleville shall "make themselves available for their assignments out of Toronto on their own time without compensation for any deadheading between Belleville and Toronto or vice versa". I do not think it can properly be concluded from this denial of paid deadheading between

Belleville and Toronto that it was contemplated that deadheading would be paid for between Toronto and Montreal, when an assignment was taken up. First, other agreements have specifically provided for it when deadheading is to be paid for in such circumstances. Second, the case of the Belleville employees was a somewhat special one, the agreement providing for employees to be drawn from Toronto, Belleville and Montreal for trains operating between Montreal and Toronto. That the somewhat unusual situation of the Belleville employees should be dealt with by a specific excluding provision does not lead to the conclusion that all other employees should be paid for deadheading necessary to take up their assignments.

For the foregoing reasons, I must hold that the collective agreement does not require payment for deadheading in the circumstances of the case. Accordingly, the grievance must be dismissed.

(Sgd.) J. F. W. WEATHERILL
ARBITRATOR