CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 542

Heard at Montreal, Tuesday, April 13, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer W. Perrick of Symington dated April 5, 1975.

JOINT STATEMENT OF ISSUE:

On April 5 . 1975, Locomotive Engineer Perrick was deadheaded the 14.01 miles from Symington to Anola where he picked up Diesel Units 9495-5156 and operated them light to Lewis, a distance of 25.5 miles, where he picked up Freight Train No. 301 and returned to Symington.

For this tour of duty, Locomotive Engineer Perrick submitted time return on a continuous turnaround basis claiming a total of 181 miles at freight rates of pay. The Company combined the service and the deadheading and allowed payment in the amount of 141 miles as provided for in Paragraph 61.4 of Agreement 1.2.

The claimant subsequently submitted a claim for payment of 40 miles, being the difference between the miles claimed and the miles paid. Payment of the claim has been declined by the Company. The Brotherhood alleges that in refusing to make payment, the Company has violated Paragraph 76.2, Article 76, of Agreement 1.2.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) A. J. SPEARE	(SGD.) S. T. COOKE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto – System Labour Relations Officer, Montreal
M. Delgreco – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. J. Speare – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

Article 76.2, on which the Union relies, is as follows:

> **76.2** All other short runs will be paid on the basis of 100 miles one way and mileage and terminal switching the other way, except in cases where overtime is made in either direction when such overtime will be paid.

The run in question, it seems, was a "short run", other than a short run as referred to in Article 76.1. There is no question of overtime in this case. The Company acknowledges that Article 76.2 would apply had the grievor's turnaround trip consisted only of freight service, without any deadheading.

It is the Company's position that deadheading is not "service", and that there was, in this case, combined service and deadheading involving a turnaround point, so that the matter would be governed by Article 61.4, which is as follows:

> **61.4** When combined service and deadheading involves a turnaround point, the provisions of Article 76 will not apply, but the time at the turnaround point will be paid for under Article 7 or Article 15 as the case may be. Such time will be excluded when computing overtime.

The collective agreement does distinguish between deadheading and service. That is not to say, however, that (except where specific provisions of the collective agreement apply) deadheading may not be combined with service for payment under a general article such as article 76.2. The mere fact that part of the short run in question was not operated by the grievor, but that he deadheaded for a part of it, would not appear to affect the general applicability of the section. The "l00 miles one way" would include all claims, deadhead and otherwise, from Symington to Lewis, to which would be added mileage and terminal time the other way.

The question to be determined in this case is whether this was combined service and deadheading "involving a turnaround point". If it is such then, as article 61.4 makes clear the provisions of article 76 do not apply. There is no doubt that there was "combined service and deadheading" in this case Article 61.3 deals with combined service and deadheading on a straight-away basis, and provides that deadheading time is to be included with time occupied in other service, even when computing overtime. Article 61.4 deals with the case of deadheading combined with turnaround service, and refers to the bases for payment for time at the turnaround point. In this case, the time is excluded from overtime.

In the instant case, there was combined service and deadheading and there was as well, a turnaround point. There was not, however, deadheading to the turnaround point, but rather to a point en route to the turnaround point. This being the case, does article 61.4 properly apply, so as to exclude the operation of article 76.2? To put the question more particularly, when article 61.4 speaks of combined service and deadheading which "involves a turnaround point", in what sense is it contemplated that a turnaround point should be "involved"?

It appears to me from a reading of article 61 and 74 in their entirety and from a consideration of such related provisions as articles 7 and 15, referred to in article 61.4, as well as the historical development of these provisions, that the essential problem to which article 61.4 is addressed is that which might arise where an employee deadheads to a turnaround point in order to bring a train back, and where his entitlement to payment for time at the "turnaround point" might not appear. Article 61.4 provides for payment of time at a turnaround point in these circumstances. In the instant case, however, the grievor took his train to the turnaround point, and he was – at least as far as his status at the turnaround point is concerned – in the course of a round trip. The potential problem to which article 61.4 provides an answer does not arise. That the grievor deadheaded to the point at which he picked up his train is of no real relevance in these circumstances. The combination of service and deadheading did not, in this case, "involve" the turnaround point of the grievor's trip.

For the foregoing reasons, it is my conclusion that article 61.4 does not apply in this case, and that the provisions of article 76 are not avoided. For the day in question, the grievor would be entitled to payment of 100 miles one way (Symington to Lewis) and to payment of mileage and terminal switching from Lewis to Symington.

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