CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2031

Heard at Montreal, Wednesday, 13 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

The payment of a wage claim submitted in connection with the application of Article 22 Clause (b) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On September 20, 1989, the Company called Conductor D.A. Densmore and Brakemen G.F. Graham and O.F. Smith in combination service on the Fredericton Turn in accordance with the provisions of Article 22(b) of the Collective Agreement.

The crew's tour of duty involved deadheading from Saint John, Fredericton, going into working service at Fredericton, and upon completion of the working service the crew deadheaded back to Saint John.

The Union contends that Article 22(b) provides that a crew can only be called in one combination, either deadheading and working or, vice versa, working and deadheading.

The Union further contends that the crew is entitled to the payment of one hundred miles for the return deadheading portion of the trip.

The Company does not agree with the Union's interpretation of Article 22(b) and has denied payment of (the) wage claim submitted.

FOR THE UNION:

(SGD) J. R. AUSTIN
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

H. B. Butterworth	– Assistant Supervisor, Labour Relations, Toronto
B. P. Scott	– Labour Relations Officer, Montreal
J. J. Worrall	– Assistant Supervisor, Labour Relations, Toronto
R. Egan	– Assistant Supervisor, Labour Relations, Toronto
F. O. Peters	– Labour Relations Officer, Montreal

And on behalf of the Union:

J. R. Austin	– General Chairperson, Toronto
B. Marcolini	– National Vice-President, Ottawa
J. M. Hone	– Research Director, Ottawa

AWARD OF THE ARBITRATOR

The instant grievance turns on the interpretation of Article 22(b) of the Collective Agreement which reads as follows:

> **22(b)** Trainmen required by the Company to deadhead to an intermediate point and going from such a point to a terminal in service or going into work train service for the balance of the day, or vice-versa, will be paid for the combination deadheading and working service as follows: When deadheading precedes working service the deadheading payment will be continuous from time ordered for until working service actually begins; when deadheading follows working service, payment for working service will continue until deadheading commences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate applicable in the combination will be allowed. For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day.

The facts in the instant case disclose that the crew's duties involved deadheading both before and after their working service at Fredricton. The issue is whether the combination of deadheading and working service can be chained together so that all three segments, deadheading, working service and deadheading, can be viewed as a single combined service, as the Company maintains. The Union submits that the article is disjunctive and that if deadheading precedes working service, any deadheading which follows working service must be viewed as an independent assignment, payable by a separate ticket under Article 22(a) of the Collective Agreement which is as follows:

> **22(a)** Trainmen required by the Company to deadhead from one terminal to another, irrespective of the manner in which the deadheading is done, shall be paid on the basis of 12- miles per hour (and overtime earned if any) at the through-freight rate for the actual time occupied. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided in Clause (b) not less than 8 hours will be paid.

In the Arbitrator's view the position of the Company with respect to the interpretation of Article 22(b) is correct. The obvious intention of the article is to deal with circumstances generally involving the combination of deadheading and working service. While the language speaks in respect of two examples, with deadheading both preceding and following work service, there is nothing on the face of the article, or underlying its purpose, to suggest that the parties intended that the combination of deadheading and working service disclosed in the facts of this case would not fall within its terms. In the circumstances, the Arbitrator accepts the position of the Company that under the terms of Article 22(b) the crew under Conductor Densmore was entitled to not less than a minimum day at the highest rate applicable in the combination. The denial of the separate claim made under Article 22(a) in respect of the deadhead from Fredericton to Saint John does not, in my view, disclose a violation of the Collective Agreement.

In particular, the Arbitrator cannot accept the suggestion of the Union that the conditions of Article 22(b) are not met in the circumstances of this case. The Union's argument that because Conductor Densmore and his crew performed switching service at Fredericton and did not go from Fredericton to a terminal disentitles the Company from applying the Article is not well founded. The combining provision of Article 22(b) is plainly intended to apply in respect of trainmen who deadhead to an intermediate point, as occurred in this case, and go into work train service for the balance of the day.

While the Arbitrator accepts the Company's interpretation of Article 22(b) of the Collective Agreement, that conclusion does not dispose of the merits of this particular grievance. It is not disputed that as of November 19, 1985 a bulletin issued by Superintendent M.S. Andrews gave crews working in the Saint John Division notice that they would be paid a straight deadhead trip for the return to their home terminal at Saint John from Fredericton when called in combination service from Saint John to Fredericton to handle traffic between that point and Fredericton Junction. That directive was not, it appears, rescinded at the time of the assignment giving rise to the instant claim. In the circumstances, it would in my view be inequitable to employees who may have bid and accepted work in reliance on that representation to be deprived of the payment promised. While the Company retains the right to issue a corrective bulletin, it does not appear that any such action was taken, at least prior to the time that the instant claim was denied. In the circumstances, therefore, the Arbitrator is satisfied that the wage claim submitted by Conductor

Densmore and crew should be paid, notwithstanding the Arbitrators's agreement with the Company with respect to the appropriate interpretation and application of Article 22(b) of the Collective Agreement.

For the reasons related above, and in the specific circumstances of this case, the grievance must therefore be allowed.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR