CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2065

Heard at Montreal, Tuesday, 13 November 1990

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer, S.H. Plant for payment of 33 miles, the disputed portion of Deadhead Claim from Fredericton to Saint John, pursuant to Article 5b(3) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On September 29, 1989, Engineer S.H. Plant was called in Combination Service on the Fredericton Turn, in accordance with the provisions of Article 5b(3) of the Collective Agreement.

Engineer Plant's Tour of Duty consisted of Deadheading from Saint John to Fredericton, going into working service at Fredericton, and upon completion of Working Service, was deadheaded back to Saint John.

The Union contends that Article 5b(3) applies, as per the example contained therein, and therefore, Engineer Plant is entitled to 100 miles for the return portion of the Trip.

The Company does not agree with the Union's interpretation of Article 5b(3), and has denied payment of the Wage Claim, as submitted.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) G. N. WYNNE	(SGD.) E. S. CAVANAUGH
GENERAL CHAIRMAN	GENERAL MANGER, OPERATION & MAINTENANCE, EAST

There appeared on behalf of the Company:

H. B. Butterworth	– Assistant Supervisor, Labour Relations, IFS
F. O. Peters	– Labour Relations Officer, Montreal
G. W. McBurney	– Supervisor, Labour Relations, IFS

And on behalf of the Brotherhood:

G. N. Wynne	– General Chairman, Smiths Falls
J. P. Beauregard	– Senior Vice-Chairman, North Bay
A. Bourgeois	– Local Chairman, Montreal
T. G. Hucker	– General Chairman, Calgary

Present as an independent observor:

C. Foisy	– Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the preponderant practice of the Company, over a period of many years dating back to the 1950's, has been to interpret and apply Article 5b(3) in the manner contended by the Brotherhood. In the great preponderance of cases claims similar to Locomotive Engineer Plant's have been honoured by the Company. Moreover, in a bulletin dated November 19, 1985, the Company's superintendent specifically advised locomotive engineers that they would be paid in accordance with the interpretation of the combination service provisions relied on herein by the Brotherhood. Subsequently, in 1987, the Collective Agreement was renewed, and has continued to the present, without any alteration in respect of the provisions of the article in question. On the basis of the evidence presented, the Arbitrator has no alternative but to conclude that the parties intended to give to the language of Article 5b(3) of the Collective Agreement the meaning which is advanced in this grievance by the Brotherhood.

For the purposes of clarity, the outcome in this decision must be distinguished from the decision of this Office in **CROA 2031**, which concerned a similar claim made on behalf of the United Transportation Union. Apart from the fact of the somewhat different wording which obtains in that collective agreement, the evidence before the Arbitrator in that grievance did not disclose the extensive and preponderant practice of the Company, over many years and in many locations, to apply the terms of Article 5b(3) in a manner consistent with the claim advanced by the Union. While in **CROA 2031** the Arbitrator allowed the claim on the basis of estoppel, what is disclosed in the instant case goes further. Quite apart from the bulletin of Superintendent Andrews, which was the basis of the estoppel in **CROA 2031**, the evidence in the instant case discloses many years of practice across the Company's eastern lines where the interpretation now advanced by the Brotherhood was consistently accepted and enforced by the Company. In these circumstances I am satisfied, on the balance of probabilities, that that interpretation reflects the intended meaning of these provisions which was mutually agreed by the parties. In this case the Arbitrator must conclude, as a matter of interpretation, that the position advanced by the Company in respect of the meaning of Article 5b(3) of the Collective Agreement is not correct.

For the foregoing reasons the Arbitrator finds that Article 5b(3) of the Collective Agreement does, as the Brotherhood submits, set out in detail the only combinations of deadhead and active service permissible. I find that the grievor was entitled to the minimum of one hundred miles of deadhead payment under Article 5b(2), and accordingly his claim for the disputed thirty-three miles must be paid by the Company.

16 November 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR