CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3868

Heard in Montreal, 11 February 2010

Concerning

ONTARIO NORTHLAND MOTOR TRANSPORTATION COMMISSION

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Payment under the provisions of article 10 of the collective agreement.

COMPANY'S STATEMENT OF ISSUE:

During the round of bargaining in 2007, the Company and the Union amended the language of article 10 pertaining to Special Trips and Chartered Buses. The parties are in disagreement as to what constitutes a "travelling day" and what constitutes an "intermittent day" and how these days should be compensated in the amended article. This disagreement in interpretation has led to the grievance filed on behalf of Motor Coach Operators Ross Firlotte, Ron Beaulne and any other affected Motor Coach Operator.

The Company has denied the grievance.

UNION'S STATEMENT OF ISSUE:

Subsequent to contract negotiations in 2007, the [parties] entered into an agreement with addressed, among other things, the manner in which employees would be compensated with respect to "special trips and chartered buses". Employees can be compensated in any or all of the following when applicable: travel days; intermittent days; no service days.

It is the position of the Union that employees are compensated for travel days for the initial and final day of the special trip or charter with all time worked between such days on the basis of intermittent days, which includes travel to and from other destinations.

The Company disagrees and maintains that additional travel to other destinations between the initial and final travel days are not deemed as intermittent days but rather as travel days and compensated on that basis.

FOR THE UNION:
(SGD.) T. WENTZELL
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) G. ZABARELLO
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

G. Zabarelo	– Manager, Labour Relations, North Bay
C. Sutton	– Vice-President, Passenger Services, North Bay

There appeared on behalf of the Union:

R. A. Beatty	– Transition Director, Sault Ste. Marie
T, Wentzell	– General Chairman, North Bay
M. McMahon	– Vice-General Chairman, North Bay

AWARD OF THE ARBITRATOR

It is common ground that in bus charter service there are three recognized categories of payment: initial/final days; intermittent days; no service days. There is no dispute between the parties with respect to the meaning and application of initial/final days or no service days. This grievance relates to the interpretation and application of intermittent days. That dispute is of some significance given that the kilometre based payment of operators can result in a wage advantage. Article 10 of the collective agreement provides, in part, as follows:

> 10.1 (b) For special trips or charters, not returning the same day, operators will be paid as follows:
>
> i. On travelling days Operators will be paid kilometres charged to the customer with a minimum of 420 kms plus applicable preparation/final compensation as per article 10.1(c). Intermittent service provided to the group after arrival at their destination shall be compensated at a rate of 52.5 kms per hour for time spent with the group. This intermittent service pay shall be in addition to the minimum 420 kilometre day.
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> ii On days where only intermittent service is required, operators will be compensated for 687 kms for a maximum of 13 hours availability which includes preparation time.
>
> iii Operators performing intermittent service prior to their return trip to their home terminal will also be compensated at a rate of 52.5 kms per hour for extra service required by the group, then live kilometres with a minimum day of 420 kms.

Reference to examples may assist in the understanding of the issue. If a group charters a coach for transportation from North Bay to Toronto, with a two-day stay in Toronto, returning to North Bay on the fourth day it appears generally understood that the originating trip from North Bay to Toronto as well as the return trip from Toronto to North Bay would constitute “travel days” within the meaning of article 10.1(b) of the collective agreement. If, on the first non-travelling day in Toronto there is no call for the use of the coach, that day would constitute a non-service charter day within the meaning of sub-paragraph iv of article 10.1(b) which provides for the payment of a minimum of 420 kilometres. If on the second day of the stay in Toronto the charter party requires the use of the coach to travel to and from museums and other points of interest, the day would qualify as one where only intermittent service is required, payable at 687 kilometres for a maximum of thirteen hours’ availability.

The Union’s interpretation is reflected in claims made by employees where employees travel to destinations other than the original destination on either the original or final day. In that circumstance they have claimed 687 kilometres on the basis that the service provided was “intermittent service”. The Company takes the position that such days are entirely payable at the minimum of 420 kilometres as “travelling days”, with the understanding that intermittent service provided after arrival on a travelling day is separately compensable as reflected in article 10.1(b)(i).

The scope of the Union’s interpretation is also best understood by means of an example. If the group described above travelled to Toronto on the first day of their

charter, then travelled on to Niagara Falls on the second day of their travel, then to Stratford, Ontario on the third day and returned from Stratford to North Bay on the fourth day, the Company takes the view that each of the four days is properly characterized as a travel day. The Union maintains that only the initial day of travel to Toronto and the final day of travel from Stratford to North Bay would qualify as a travelling day. In the Union's submission, the travel from Toronto to Niagara Falls on a subsequent day, as well as the travel from Niagara Falls to Stratford on yet a further day, would be days involving "only intermittent service" within the meaning the sub-paragraph (ii) of article 10.1(b), and therefore should be payable at 687 kilometres rather than the minimum of 420 kilometres, or actual kilometres, as the case may be.

Having regard to the history of the provisions here under examination, the Arbitrator has some difficulty with the position argued by the Union. The collective agreement in force between August 31, 2002 and August 31, 2006 contained, within article 10.1(b), the following:

> On days where customers require intermittent service, operators will be paid actual kilometres charged to the customer with a minimum of 420 kilometres.

Certain concerns and difficulties with respect to what employees viewed as fair compensation caused the parties to revisit the situation and enter a letter of understanding dated December 7, 2005 which provided, in part:

> 1. On travelling days Operators will be paid kilometres charged to the customer with a minimum of 420 kms. If the Operator provides extra service to the group after the completion of his/her travel day he/she will be compensated at a rate of 48 kms/hr for time spent with the group.

> 2. On days where only intermittent service is required, Operators will be compensated with a minimum of 420 kms. If the Operator's services are required for more than 8 hours allotted under the minimum of 420 kms per day, he/she will be compensated at a rate of 48 kms/hr for up to 2 extra hours with a total of 10 hours. There will be a grace period of 4 hours. If the intermittent service exceeds 14 hours, operators will be put back on the clock at a rate of 48/kms/hr and be compensated for intermittent service until the completion of their assignment on that day. …

It appears that the letter of understanding still had difficulties, as a result of which the parties ultimately agreed on the languae which is now found in article 10.1(b).

In the Arbitrator's view a review of the history of these provisions confirms, as the Company submits, that the concept of intermittent service relates fundamentally to service provided to charter parties which is supplementary to the service in getting them from their place of origin to their place of destination. That appears evident from the original phrasing from the collective agreement which expired August 31, 2006, where reference is made "… days where customers require intermittent service", as distinguished from days characterized as initial and final charter days. The agreement also contemplates the provision of extra service on travelling days, by reference to intermittent service on such days as reflected in paragraph (i) of article 10.1(b).

Additionally, from a purposive point of view, the interpretation of the Union raises fundamental questions. As confirmed at the hearing, if a group chartered a motor coach from North Bay to Vancouver with, for example, five legs of daily travel between pre-determined cities, the Union would treat only the first and last days as travelling days. By its interpretation, if the trip were to involve stops at Sault Ste Marie, Thunder Bay, Winnipeg, Saskatoon, Calgary and Vancouver only the travel between North Bay and

Sault Ste Marie, going and returning, would qualify as travelling days. All other days would, in the Union's view, be intermittent days to be compensated at the higher rate provided.

In the Arbitrator's view the logic of that position is not compelling, and would appear counter-intuitive to the concept of travel days and intermittent service ~~days~~ as reflected in the language of the collective agreement. In the Arbitrator's opinion, the better view is that days of travel from one fixed destination to another, without additional service, should be viewed as travelling days. Additional transportation of the charter passengers at or around any of the identified destinations would properly be viewed as intermittent service, to be compensated under either sub-paragraph (i), if the service is on a travelling day or sub-paragraph (ii) if it is on a day where only intermittent service is provided. I am satisfied that to allow the Union's interpretation would be effectively to improperly convert what are simply travelling days to days of intermittent service in a way not consistent with the intention of article 10.1(b) of the collective agreement.

For all of the foregoing reasons the grievance must be dismissed.

February 26, 2010

(signed) MICHEL G. PICHER
ARBITRATOR