

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4551

Heard in Montreal, April 14, 2017

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Policy grievance regarding the requirement for Train and Engine employees to drive a Company vehicle when requested and the Company's determination that it is considered as a condition of employment.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

The Company has implemented policy which requires Train and Engine employees to drive themselves in a Company supplied vehicle, in various circumstances including while deadheading. Additionally, the Company has mandated the practise as well as the requirement to hold a valid driver's license as a condition of employment.

The Union contends that employees by law or by Collective Agreement(s) are not required to hold a valid driver's license or drive Company supplied vehicles. The Union further contends the Company's actions are in violation of the Collective Agreements (as outlined within our grievances) regarding deadheading on pay. The described actions also fail the appropriate tests required to institute company policy.

The Company regularly has crews drive themselves between the outpost terminal of Sudbury and the AFHT of Cartier and vice versa. This was previously grieved by the Union and the Company resolved the grievance in the Union's favour but the violation has continued. The Company in Eastern and Western Canada Terminals have crews drive themselves in DH service between the Home Terminal and AFHT in violation of their respective agreements.

The Union seeks a finding that the Company has violated the provisions as outlined above, and an order that the Company cease and desist its ongoing breaches as described. The Union also requests all employees affected by this improper application be made whole for any associated loss.

The Company has denied the Union's request.

FOR THE UNION:

(SGD.) J. Campbell and W. Apsey

General Chairman LE & CTY East

FOR THE COMPANY:

(SGD.)

There appeared on behalf of the Company:

C. Clark

– Assistant Director, Labour Relations, Calgary

D. Guerin	– Senior Director, Labour Relations, Calgary
G. Parmar	– Senior Director, Crew Management, Calgary

And on behalf of the Union:

A. Stevens	– Counsel, Caley Wray, Toronto
J. Campbell	– General Chairman, LE East,
W. Apsey	– General Chairman, CTY East, Smiths Falls
G. Edwards	– General Chairman, LE West, Calgary
D. Fulton	– General Chairman, CTY West, Calgary
H. Makoski	– Vice General Chairman, LE West, Winnipeg
E. Mogus	– Vice General Chairman, CTY East, Toronto
D. Edward	– Vice General Chairman, CTY West, Medicine Hat

AWARD OF THE ARBITRATOR

Nature of the Case

1. The parties disagree whether CP currently has the right under the collective agreement to supply a company vehicle and oblige TCRC members to deadhead themselves. TCRC also contested CP's right to require conductors and locomotive engineers to hold valid driver's licences.

2. While the TCRC's ex parte statement goes beyond deadheading, its submission clarified that deadheading practices are the specific issue before the arbitrator (Union Submission, U-1, Paragraph 11).

3. For the reasons below, the arbitrator has concluded that the current language does not allow CP to require conductors and engineers to drive company vehicles to deadhead themselves. That finding renders moot the related question of requiring driver licences for deadhead driving.

Facts

4. At the hearing, the parties agreed that the scope of this matter involves certain grievances which TCRC had filed in the East. However, any principles arising from this decision will apply in the East and West. This decision does not concern employees who may drive a vehicle inside a terminal.

5. In one of the representative eastern cases, on August 5, 2016, CP asked Conductor Cornect and Locomotive Engineer Souliere to drive a CP vehicle from their relieved location to their home terminal. The relieved crew, which was still within their paid tour of duty, made the 15-minute drive from the Selim Siding to their Home Terminal in Schreiber, ON.

6. TCRC filed a November 2016 policy grievance for conductors and engineers contesting CP's authority to require deadheading employees to drive CP vehicles or to hold a valid driver's licence.

7. CP candidly admitted the novelty of its request that deadheading employees drive themselves. CP had previously used taxis and third party crew transport services to deadhead employees. For both operational and costs-savings reasons, CP preferred its employees, who were still being paid, to drive themselves in company vehicles, when necessary. CP argued that nothing in the collective agreement restricted its traditional management rights to introduce this additional deadheading method.

Analysis and Decision

8. The same negotiated deadheading provision appears in both the conductors' (CTY) and engineers' (LE) collective agreements:

24.04 CTY East – 5.02 (4) LE East

When a Locomotive Engineer and/or Trainperson is ordered to deadhead on pay, the Company will provide or arrange for transportation. When rail or other public transportation is not available and a Locomotive Engineer and/or Trainperson is authorized to use their private automobile, they will be reimbursed at the rate as specified in Clause 1.20.

9. Articles 24.04 and 5.02(4) confirm the parties have negotiated into the collective agreement what happens when an employee, who is still being paid, needs to deadhead. CP has agreed to “provide for” transportation or to “arrange for” transportation.

10. CP argues that the expressions “provide for” or “arrange for” cover situations where it makes a company vehicle available so that employees can deadhead themselves.

11. The online [Merriam-Webster dictionary](#) defines “provide for” as follows:

Definition of *provide for*

1 : to cause (something) to be available or to happen in the future *The contract provides for 10 paid holidays. The law provides for the appointment of a new official.*

2 : to supply what is needed for (something or someone) *It's hard to make enough money to provide for such a large family. They agreed to provide for the child's education.*

12. The same dictionary defines [“arrange”](#) as:

Definition of *arrange*

Arranged arranging

- 1 : to put into a proper order or into a correct or suitable sequence, relationship, or adjustment *arrange flowers in a vase arrange cards alphabetically*
 2 : to make preparations for : plan *arranged a reception for the visitor*

13. The above definitions could arguably support both CP's and TCRC's interpretation arguments. It is the term "transportation" which needs further clarification. A reading of the entire provision confirms the parties' negotiated understanding.

14. The second sentences of identical articles 24.04 and 5.02(4) shed light on what the parties meant by their use of the word "transportation". This phrase used in the second sentences clarifies the term "transportation": "When rail or other public transportation is not available...".

15. That negotiated wording confirms that "transportation" means either a taxi or "other public transportation". If this type of third party transportation is not available, then a CP employee, if authorized, could use his or her private automobile. CP agreed to reimburse an employee who used a private vehicle.

16. It is the second sentences which convince the arbitrator that the deadheading of employees requires third party public transportation. Evidently, CP itself could decide to provide this transportation in the same way as a third party. But the language does not contemplate employees being supplied with a CP vehicle and being required to drive themselves.

17. This Office has frequently confirmed CP's view that management rights allow employers to organize their workplace. This can include assigning new job-related duties for the running trades: [CROA&DR 2696](#). But, since CP and TCRC agreed on specific deadheading principles, CP will need to negotiate changes to those principles.

18. Accordingly, the arbitrator accepts TCRC's grievance and declares that CP's practice of having TCRC members drive company vehicles to deadhead themselves violates the collective agreement. CP shall cease and desist from imposing this driving requirement. The arbitrator reserves jurisdiction for issues related to remedy, if any.

April 25, 2017



GRAHAM J. CLARKE
ARBITRATOR