CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE N0. 3

Heard at Montreal, Monday, July 5th, 1965

Concerning

CANADIAN NATI0NAL RAILWAYS (WESTERN REGION)

and

THE BR0THERH00D 0F RAILROAD TRAINMEN

DISPUTE:

Claim of Conductors Davis, Harris and Manning and crews for 100 miles each account being run around when a crew assigned to another subdivision, was assigned to the auxiliary on the Sprague Subdivision August 3, 1963.

JOINT STATEMENT OF ISSUE:

On August 3, 1963 Conductor Tymchyzm and crew were used in auxiliary service on the Sprague subdivision. Conductors L.L. Davis and crew, N.H. Harris and crew and W.M. Manning and crew submitted claim for 100 miles as having been run around, on the grounds that Conductor Tymchyzm and his crew were not assigned to the Sprague subdivision and, therefore, the Company had violated Article 3, Clause (f) of the Collective Agreement governing conductors and brakemen respectively. The claims were declined by the Company.

FOR THE EMPL0YEES:

(sgd) H. C WALSH
General Chairman

F0R THE COMPANY:

(Sgd.) T A. J0H?STONE
ASST. VICE-PRESIDENT -
LAB0UR RELATI0NS

AWARD OF THE ARIITRATOR

The following are reasons for judgment delivered on July 10, 1965, by Mr. J. A. Hanrahan, Arbitrator, following a hearing before him held in Montreal, Quebec, on July 5, 1965, u?der the authority conferred upon by him by the terms of the agreement between the parties dated January 7th, 1965:

The issue in this matter concerns the claim, indicated in the joint

statement of issue, for run-around payment.

For the employees concerned Mr. Walsh referred the Arbitrator to Article 3, Clause (f) of the Conductors' Agreement and Article 3 (Clause (f) of tho Trainmen's Agreement, both reading as follows:

> "Conductors/trainmen in chain gang regularly set up will be run first in first out of terminal points on their respective sections.
>
> "All such conductors/trainmen ready for duty so run around will be paid one hundred miles each run around, retaining their original standing on train board."

The facts showed that on August 3, 1963, on short notice, auxiliary service was ordered at 24.20K on the Sprague subdivision between Winnipeg and Rainy River (East of Winnipeg) as result of derail- ment of seven cars on train No. 976 at mileage 57.6.

An auxiliary is a specialized train ready at all times and fitted with all types of equipment required for track repair work and, in addition, it carries a heavy-duty wrecking crane capable of lifting cars or locomotives off the track or rerailment of them.

At the time in question, unassigned freight pool crews to whom work on the Sprague subdivision is normally allotted were on the pool board in the following order:

Conductor L. Davis and crew
N. Harris and crew
W. Roberts and crew
G. Livingstone and crew
W. M. Manning and crew

Conductor Manning and crew, who are assigned to the Sprague subdivision arrived at Symington and went off duty at 22:15K, August 3rd. They had not booked rest and when informed by the operator at Symington that the No. 2 auxiliary was being called for a derailment on the Sprague subdivision, Conductor Manning informed the crew office that he and his crew were available for such service immediately. He was informed another crew had been called. As stated, Conductor Tymchyzm and crew were used.

Mr. Walsh contended that failing to use Conductor Manning and Crew Conductor L.L. Davis and crew, who are assigned to the Sprague subdivision and who were first out, should have been used.

Because of this alleged violation of Article 3, Clause (f) these claims were filed by the three crews and payment demanded for each on the basis of one hundred miles, because of the alleged run-around.

The term run-around was explained as being applicable to a situation where an employee who should normally be called for work is not and such work is given another.

Mr. Walsh contended the plural aspect of the second paragraph of the Clause in question should be given its normal connotation. Therefore, all "conductors/trainmen ready for duty", which on this occasion meant the claimants, should be paid the penalty he claimed was intended to be imposed under this provision.

It is a well established principle that the object of all interpretations of a written instrument is to discover the intention of those creating it.

A study of the clause in question indicates an intention to give to employees it covers a benefit somewhat comparable to that contained in seniority provisions in industria1 collective agreements The difference being that instead of a greater number of years of service qualifying an employee for certain benefits, here it was the time of his arrival and availability for further assignment, as indicated by his place on the board, that earned him a superior position over similar employees for a first-out assignment.

It is also a cardinal rule of interpretation that no instrument should be construed in a manner that would bring about an absurd result. A decision of the Supreme Court of Canada, Coffin vs Gillies (1915) 51 S.C.R. 539, is authority for the proposition that:

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> "In construing a contract the grammatical and ordinary sense of the words should be adhered to, unless that would lead to some absurdity, or inconsistency with the rest of the instrument, in which case the ordinary sense of the words may be modified to avoid such inconsistency."

In considering the second paragraph of the clause in question, commencing with the words "all such conductors/trainmen", the qualifying words that follow are, in my opinion, of determining importance in deciding the intention of the parties and the purpose of this provision. They are "......ready for duty." Obviously only one crew would be required for the duty in question. If the members of the crew first on the list were ready and were not called, the penalty must be paid them. Those were the employees who were entitled to this special consideration and those were the ones whose right in that respect had been violated. Their "readiness" removed those following on thc list from immediate consideration.

It was stated that at the Winnipeg terminal on occasions the pool list would have on it some sixteen employees. Obviously the ones at the bottom of such a list would not be on a "first-out" level. They would not rise to that plateau until the others ahead of them had been used. A violation of the rights of the crew at the top of the list would have no adverse effect upon their immediate rights.

In view of the obvious purpose of this provision, in accord with the decision of the Supreme Court cited, the plural aspect of the description of the employees in the second paragraph of this clause "may be modified" to avoid an otherwise absurd result, in the light of the actual merits involved.

As admitted by the Company there was clearly a violation of this provision as it concerned the first conductor and crew, namely Conductor Davis and crew. They should be paid the penalty provided.

For the reasons given the claims of the other employees are disallowed.

J A.
HANRAHAN
ARBITRAT0R