CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 33

Heard at Montreal, Monday, April 18th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PACIFIC REGION)

and

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Engineers J. W. Bidnall and L. G. Snowden, Kamloops, B C. for being run-around October 19th and November 14th, 1965, respectively.

JOINT STATEMENT OF ISSUE:

The Engineers' spareboard at Kamloops consists of two men. On October 19th both spare men were working and a vacancy existed in the Engineers' pool immediately ahead of Engineer Bidnall. The same situation developed on November 14th involving Engineer Snowden. On both occasions although pool engineers were available to fill these pool vacancies, firemen were used for this purpose.

Engineers Bidnall and Snowden submitted run-around claims under Article 29 (f) of the Brotherhood of Locomotive Engineers collective agreement governing engineers. Run-around claims have been declined by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) H. L. MAY	(Sgd.) A. M. FRASER
GENERAL CHAIRMAN	GENERAL MANAGER (P.R.)

There appeared on behalf of the Company:

J. G. Benedetti	- Supervisor - Labour Relations, C.P.R., Vancouver
C. F. Parkinson	- Labour Relations Assistant, C.P.R., Montreal
H. G. McGinn	- Asst. to Manager Labour Relations, C.P.R. Montreal

And on behalf of the Brotherhood:

H. L. May	- General Chairman, B.L.E., Winnipeg
E. C. Machin	- Genera1 Chairman, B.L.E., Montreal

AWARD OF THE ARBITRATOR

This problem has overtones of a jurisdictional dispute between two Brotherhoods It was stated that in 1962, as result of a suggestion made in Case No. 671 before the Canadian Railway Board of Adjustment, an amendment was made to the agreement between the Company and the Brotherhood of Locomotive Firemen and Enginemen's agreement. This was captioned Article 26 (k) 1, 2, 3, 4.

The suggestion made by the Board of Adjustment read:

> "It developed at the hearing that there is no clear understanding between the Company and the Brothcrhood of Locomotive Firemen and Enginemen as to the employee who should be called when a temporary spare engineer is required. The Board is of the opinion that such a clear understanding is desirable and for this purpose the Board recommends that thc parties confer together promptly in order to reach such an understanding."

As indicated in the Joint Statement of Issue, the engineers' spareboard at Kamloops consists of two men. There was a vacancy ahead of Engineer Bidnall on that date in the engineers' pool. The same situation existed on November 14th with relation to Engineer Snowden.

Mr. May contended that Article 26 (c) and Article 29 (f) should govern in these circumstances:

Article 26 (c) reads:

"If run around avoidable engineer will be entitled to 50 miles at minimum passenger rates."

Article 29 (f) reads:

"Should there be no available pool engineers to fill pool vacancies or spare engineers to fill necessary vacancies, the senior qualified fireman will be used."

It is to be noted Article 29 (f) makes no mention of the spare board.

For the Company Mr. Benedetti claimed that the amendment to this agreement with the Brotherhood of Locomotive Firemen and Enginemen was concurred in by representatives of the Brotherhood of Locomotive Engineers. Because of this, it was contended, the wording of this new provision should prevail. Different to the term "pool vacancies" contained in Article 29 (f) of the Engineers' agreement, Article 26 (k) 1, headed "Filling Engineers' Vacancies" reads:

> "When there are no engineers available on the engineers' spareboard, and it is necessary to use a demoted engineer or qualified helper to protect an engineer's vacancy, such demoted or qualified man, not on rest, in pool and spareboard service will be considered available and will be used in

seniority order."

Reliance for the action taken in refusing these claims is based solely upon the fact that the names of Messrs. Bidnall and Snowden did not appear on the "spare board".

No evidence was offered by the Company as to the formality of the concurrence of representatives of the Brotherhood of Locomotive Engineers. The statement was made they had participated and concurred in the finalized provision.

For the claimants, Mr. May produced copies of correspondence between officials of the Company and the General Chairmen of the Brotherhood of Locomotive Engineers. One of these, dated July 31, 1962, addressed to the Assistant Manager, Labour Relations, Canadian Pacific Railway, over the signature of Mr. J. F. Walter, General Chairman on the Atlantic and Eastern Regions, gave this qualified, and, in my opinion, important concurrence -

> "The proposed agreement appears to be an attempt to provide a clear and uniform rule to govern the calling of qualified firemen when it becomes necessary to use firemen to protect engineers' vacancies.
>
> This being the case, you have my concurrence in the approval of the rule, with the clear understanding that fireman helpers will only be used to fill engineers' vacancies when such assignments cannot be filled by available engineers."

Having in mind the provisions of Article 29 (f) of the agreement with the Brotherhood of Locomotive Engineers, there would appear to me to be an obligation upon the Company to vitiate its clear implication that all those in pool service were to be in a superior position in filling vacancies to that of firemen, by language other than contained in Article 26 (k) (1) of the agreement with the Brotherhood of Locomotive Firemen and Enginemen.

No one can question the primary right of engineers to drive locomotives. The agreement the Company has with them still contains Article 29 (f). It was not deleted when Article 26 (k) came into effect. In my opinion it has not been amended by reference to the "spareboard" rather than "pool vacancies". Of controlling value, too, are the words in the latter provision " ...and it is necessary to use a demoted engineer or qualified helper to protect an engineer's vacancy."

To have that provision apply in the circumstances being considered there would have to be established a necessity. Giving that term undefined in the agreement, a dictionary meaning as something unavoidable, it cannot rcasonably be said that the two claimants should have been replaced by other than engineers because it was unavoidable They were available; they are the employees with basic rights to drive locomotives, except when those rights are modified by mutual agreement in a manner leaving no doubt that they are content to give to those whose rights appear in another agreement what is primarily theirs. In my opinion, in the circumstances described,

this would have required an amendment to Article 29 (f) of the Engineers' Agreement. This not having occurred and there being "pool engineers" available on these occasions there was "no necessity" to use others.

For these reasons these claims are allowed.

J. A. HANRAHAN
ARBITRATOR