CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 66

Heard at Montreal, Monday, May 8th, 1967

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Runaround Claim submitted by Brakeman K. Cartmill when not called for spare Assistant Conductor on Passenger Train No. 1, October 10, 1966.

JOINT STATEMENT OF ISSUE:

Trainman H. M. Hernden worked as Conductor in Pool Freight Service on Soo Subdivision prior to change of Time Table October 9, 1966. On re-bulletining of all positions, Hernden was assigned Brakeman in Pool Freight Service, Soo Subdivision, home terminal Steelton.

On October 10, 1966, Hernden was called for and accepted a spare run as Assistant Conductor, Passenger Train No. 1. On his return to Steelton that day he booked o.k. for vacation relief job as Conductor in Pool Freight Service on Soo Subdivision.

The Brotherhood contend that the Company violated Articles 61 (g) and 72 (a) of the Collective Agreement when it called Trainman Hernden for the spare run as Assistant Conductor.

The Company contends that Hernden was entitled to the spare Assistant Conductor's job on Passenger Train No. 1 and declined payment of Cartmill's Runaround Claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) C. E. McCLELLAND GENERAL CHAIRMAN	(Sgd.) J. A. THOMPSON VICE-PRESIDENT - RAIL OPERATIONS

There appeared on behalf of the Company:

J. A. Thompson	Vice-President-Rail Operations, A.C. Rly, Sault Ste. Marie
H. R. Wootton	Manager Rail Operations, AC.Railway, Sault Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland — General Chairman, B.R.T., Sault Ste. Marie, Ont.

AWARD OF THE ARBITRATOR

The facts established that Conductor H. M. Hernden arrived at his home terminal, Steelton, at 4.10 p.m. on October 9, 1966, and was 'bumped" on arrival, due to a reduction of crews that took place because of a Time Table change.

Because of the rebulletining of all positions that then became necessary under Article 71 (a) of the agreement, Mr. Hernden was assigned as brakeman in pool freight service of the Soo Subdivision, at his home terminal Steelton.

Article 71 (a) provides in part:

> "Permanent vacancies of seven days or more will be bulletined and the senior qualified applicant will be assigned. Runs will be similarly bulletined and filled at the Spring and Fall change of time table..."

Brakeman K. Cartmill, a qualified conductor, held an assignment as Brakeman in Pool Freight Service on the Soo Subdivision both before and after rebulletining at the change of Time Table on October 9th.

A senior Conductor assigned in Pool Freight in this subdivision went on vacation from October 7 to 18 inclusive. The vacancy was filled by a conductor junior to Hernden, Mr. McArthur. On October 9th this vacation assignment, which was Train No. 9, departed Steelton on the arrival of Train No. 10, at 5.00 p.m., carrying Mr. Hernden.

Having been "bumped" on arrival at home terminal Steelton at 4.10 p.m. October 9, Mr. Hernden became the senior qualified brakeman at the Steelton terminal.

On that date, October 9, Mr. Hernden booked "okay" on crew sheet for the spare job of Assistant Conductor required for Passenger Train No. 1, October 10.

On October 9, Brakeman K. Cartmill was the second senior qualified brakeman at this terminal. On October 1Oth, he was called for his regular assignment as brakeman, departing Steelton on Train No. 9 at 5:35 p.m.

On October 10, Brakeman Hernden was called for and accepted the spare run as Assistant Conductor on Passenger Train No. 1, working on same to the meeting point with Passenger Train No. 2 and returned to Sault Ste. Marie, going off duty at 6:25 p.m., October 1Oth.

It was this run that prompted Brakeman K. Cartmill to submit a runaround claim for 50 miles, because Brakeman Hernden had been used

on spare run as Assistant Conductor.

The Brotherhood based their claim on the provisions of Article 72 (a) and Article 61 (g). This portion of Article 72 (a) was quoted in their brief:

> "Establishment of Conductors Spare Boards: (a) Conductors working as Brakemen in either assigned or irregular service will be required for all relieving of Conductors."
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> And this portion of 61 (g):
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> "A promoted Conductor will not be permitted to hold an assignment as Brakeman out of his home terminal while a junior Conductor is employed as Conductor out of such terminal."
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> The Company's spokesman first pointed to Article 72 (c) reading:
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> "The senior qualified available man at each terminal will stand first out for spare work on the subdivision to which he is assigned. When the senior man is called for a run, the next senior man will be so notified."

The Company contended that at the time of Conductor Hernden's arrival in Steelton on October 9th he was displaced from his existing position as a Conductor, reduced to the rank of brakeman, excepting only that another position as conductor might be available to him. Such position, it was claimed, had in fact existed on that date, but it had been filled by a man junior to Hernden, who was on the point of leaving at the time Hernden arrived.

It was the Company's contention that Mr. Hernden's claim to this trip could not be avoided under the provisions of Article 72 (c). Had Conductor Cartmill been called, undoubtedly Hernden would have claimed a run-around.

There is no dispute that on the date in question both Messrs. Cartmill and Hernden had the classification of brakeman. Further, there is no dispute that Mr. Hernden was senior in that classification to Mr. Cartmill.

Of governing importance to the Brotherhood's claim is that Article 61 (g) operates to prevent Mr. Hernden taking this assignment, because Conductor McArthur, who was junior to him, took the holiday assignment on October 9th.

A study of this Article convinces it has no application in the circumstances described. Its governing purpose is clearly expressed in the words "A promoted Conductor will not be permitted to hold an assignment as a brakeman out of his home terminal while a junior conductor is employed as conductor out of this terminal."

In this instance, Mr. Hernden did not, of course, take an assignment as a brakeman.

This reduces the problem to the applicability of Article 72. As senior brakeman there was nothing to prevent Mr. Hernden seeking and obtaining this spare run on Train No. 1 on October 10. He was a conductor then working as a brakeman. He was required in this irregular service to relieve as a conductor. As senior qualified man, under Article 72 (c) he was entitled to stand "first out for spare work."

The Company's brief suggested the desirability of a ruling as to whether or not there is a mutual obligation upon the parties to the agreement to administer its provisions. For example, if in this case it had been found that Hernden was in the wrong, could the Company alone be held responsibles or should the Union control their members so as to prevent such an occurrence.

As this was a point not raised in the Joint Issue and the Brotherhood's representative did not concur in the suggestion, not being ready to present an argument on it, this suggestion must remain for future determination, if an when raised.

For the reasons given this claim is denied.

J. A. HANRAHAN
ARBITRATOR