CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 100

Heard at Montreal, Tuesday, February 13th, 1968

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Two claims for 166 and 153 miles respectively submitted by Locomotive Engineer R. Sprague of London, Ontario when not called for service on Saturday, September 3, 1966.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer R Sprague was regularly assigned to Trains 494 and 795 operating daily except Saturday and Sunday, London, Ontario to Toronto Yard. On Saturday, September 3, 1966 the Company operated a train from London to Toronto Yard which Engineer Sprague alleged was No. 494 of Friday, September 3, 1966 operating late. Since an unassigned engineer was used to man the train operated on Saturday, September 3, 1966, Engineer Sprague claimed the miles made by the unassigned engineer on the basis of a violation of the Memorandum of Understanding dated August 18, 1966 and the first paragraph of Article 29 Rule B.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) E. J. DAVIES GENERAL CHAIRMAN	(Sgd) E. K. HOUSE ASSISTANT VICE PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. Fraleigh	Senior Agreements Analyst, C.N.R., Montreal
A. Clement	Senior Agreements Analyst, C.N.R., Montreal
R. J. Wilson	Labour Relations Officer, C.N.R., Toronto
M. A. Matheson	Asst. Labour Relations Officer, C.N.R., Toronto

And on behalf of the Brotherhood:

E. J. Davies	E. J. Davies General Chairman, B.L.E., Aurora, Ont

AWARD OF THE ARBITRATOR

Because of a strike of non-operating employees and those represented by the Brotherhood of Railroad Trainmen commencing at 1200 hours August 26, 1966, ended by the Maintenance of Railway Operations Act late on the evening of Thursday, September 1, 1966, trains were not operated during that period.

It was stated by the Company's representative that even following the Act requiring the resumption of operations, certain key groups of employees at London, Ontario and elsewhere refused to return to work and continued their strike action. It was said certain key employees at London remained on strike until approximately 1050 hours, Saturday, September 3, 1966.

Following the return to work of necessary employees at London, on Saturday, September 3, 1966, the first service performed shortly after 1050 hour by the Company was with a yard engine to switch the Kellogg industry to expedite movement of that company's cereal products.

The first main line movement out of London involved a freight train ordered for 1315 hours Saturday, September 3. On the same date the first passenger trains operated were ordered for 1925 and 2100 hours with the usual assigned engine and train crews.

The next train operating Saturday, September 3, was a freight ordered for 2030 hours, departing at 2325 hours with unassigned Engineer Tapp.

Prior to the strike of non-operating employees and those represented by the Brotherhood of Railroad Trainmen, the Company and the Brotherhood of Locomotive Engineers signed a Memorandum of Understanding on August 18, 1966, providing that in the event a strike took place all engineers' assignments would be temporarily cancelled. It also provided that "upon resumption of operations" engineers would automatically resume their former assignments without the need for rebulletining. This was stated in this language:

> "Upon resumption of operations, it will not be necessary to rebulletin assignments and the employees will automatically resume their former assignments."

Engineer Sprague was one of two engineers assigned to Trains 494 and 795, operating daily between London and Toronto except Saturday and Sunday. They worked on a rotation basis, with one engineer working Monday, Wednesday, and Friday one week and Tuesday and Thursday the following week.

Article 47 of the agreement provides:

> "An engineer assigned to a regular run will, if available, follow his assignment."

It was contended for Engineer Sprague that the back to work order issued on the evening of September 1st, 1966, required him to protect his assignment from that point on. Friday, September 2nd being his regular assigned day out on Train 494, he was available and holding

himself in readiness for the call which did not materialize.

Undoubtedly contributing to this claim being processed is the fact that the train designated by the Company as a special train was given the number, 494, that the grievor would have been on, Friday, had it not been for the strike.

An explanation for this was offered the Brotherhood in a letter dated December 8, 1966, over the signature of the Operations Manager, that said, in part:

> "The information available to me indicates that this assignment is scheduled to operate daily except Saturday. While it is correct that the train was not operated Friday, September 2, because of events related to the service disruption, this would not permit us to extend the assignment to Saturday. The train which operated Saturday would have to be regarded as extra train service and work which should have been handled by a spare crew.
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> I do not believe that the situation has altered by the fact that the train was designated as "494" for operating purposes. Our machine record system requires that all trains be given a certain designation and service east from London could have been called either "494" or a section of train "830". The former was chosen because it is a familiar designation here in London and this does not, in our opinion, establish a basis for Mr. Sprague's claim.
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> Our position must be that since this train operated Saturday, it was extra train service and that, if held otherwise the Company would be open to a claim from spare employees."

For the Company it was claimed on a number of occasions prior to the rate of this incident trains between London and Toronto had been operated on the days off of the two regular engineers and such trains had been designated as No. 494 for operating and accounting purposes These trains were said to be manned by spare engineers as required by Article 49.

Article 49, under the heading "Running of Engineers on Spare Board" provides:

> "Engineers assigned to the spare board will be run first-in first-out in order of their release from previous duty and, if qualified and available, will be entitled to (1) all relief work consistent with Article 45, (2) extra yard and transfer service, and (2) extra road service when Engineers assigned to pool or chain gang service are not available."

In support of his contention the representative for the Brotherhood produced a letter dated April 14, 1955, over the signature of the Locomotive Foreman at London, that dealt with an arrangement said to have been then countenanced when train 494 was cancelled on week-ends or holidays, and when an extra was required, that the regular assigned crew could be usad to mann the same.

This letter was objected to by the Company's representative, because it had not been produced prior to this hearing and was not mentioned in the Joint Statement of Issue.

On these facts there can be no doubt that the grievor's regular assignment entitled him only to operation on the trains in question Monday through Friday, according to the pattern dividing the work between himself and another engineer. As provided in the Memorandum of Understanding, to "automatically resume his former assignment" following resumption of operation on Saturday, would clearly mean that he should take Train 494 out on Monday. His regular assignment did not call for him to work either train on a Saturday. Had he been permitted to do so this Saturday, the Brotherhood, as well as the Company, undoubtedly would have heard from Engineer Tapp, with the claim that his right to do so had been ignored.

For these reasons this claim is dismissed.

J. A. HANRAHAN
ARBITRATOR