

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 112

Heard at Montreal, Tuesday, June 11th, 1968

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Conductors E. Matthews and G. Plumbtree for deadheading Steelton to Hawk Junction, January 20 and January 22, 1968, to fill yard assignments at that point.

JOINT STATEMENT OF ISSUE:

Bulletins were posted January 12, 1968, advertising for two yard crews at Hawk Junction to work seven days a week and each crew required one yard foreman to work five days a week and one yard foreman to work two days as foreman and three days as yard helper.

There were no applications received for the two yard foremen's positions and Conductors E. Matthews and G. Plumbtree who were working out of Steelton Terminal at the time were assigned.

Time claims were submitted by Conductors Matthews and Plumbtree for payment for deadheading Steelton to Hawk Junction to fill the assignments. The Company declined payment of the claims and the organization alleges that, in refusing to make payment, the Company violated Article 21 (c) of the Collective Agreement.

FOR THE EMPLOYEES:

(Sgd) C. E. McCLELLAND
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd) J. A. THOMPSON
VICE-PRESIDENT - RAIL
OPERATIONS

There appeared on behalf of the Company:

H. R. Wootton	Manager Rail Operations, A.C. Rly., Sault Ste. Marie, Ont
R. H. Rankin	Superintendent, A. C. Rly., Sault Ste. Marie, Ont.

And on behalf of the Brotherhood:

C. E. McClelland	General Chairman, B.R.T., Sault Ste. Marie, Ont.
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AWARD OF THE ARBITRATOR

The Article in question reads:

"Trainmen when deadheading to exercise seniority rights, or returning after having done so, or as a result of the application of Article 67, Mileage Regulations, will not be entitled to compensation therefore. Deadheading in connection with relief work which men have bid in or claimed on seniority basis shall not be paid for, but when not so bid in or claimed, and the men are ordered by the Railway to deadhead, any such deadheading shall be paid for."

As indicated in the Joint Statement of Issue no applications being received for the two yard foremen's positions advertised in the Bulletins of January 12, 1968, the two claimants, then working out of Steelton Terminal, were assigned to that duty.

The representative for the Brotherhood submitted that under Article 59, Seniority Rights, trainmen are allowed to exercise their seniority but are not forced to exercise their seniority on jobs they do not want.

Reference was made for the claimants to decisions of the Canadian Railway Board of Adjustment No. 1, in their Cases No's 647, 685 and 756. No reasons were given for the conclusions reached by the Board but in each case they allowed claims. The first of these dealt with a provision governing relief work for which the employees did not bid, but were assigned; the second involved a provision reading "If any deadheading is necessary by the application of the mileage regulations or in exercising of seniority rights, same will not be paid for." The third decision considered a provision reading "Deadheading in connection with relief work which men have bid in or claimed on seniority basis shall not be paid for, but when not so bid in or claimed and the men are ordered by the Railways to deadhead, any such deadheading shall be paid for." The latter dealt with the filling of temporary vacancies, or relief work.

It was submitted for the claimants that they did not make application for these two positions at Hawk Junction and that this entitled them to deadheading under Article 21 (c).

The first contention by the Company was that the first sentence of the rule clearly states there will be no compensation for deadheading when exercising seniority rights. The second sentence of the rule deals with deadheading in connection with relief work. As the men in question were deadheading to fill permanent yard assignments, it was submitted only the first sentence had application.

Reference was made to Article 104, Rule (c) of the Agreement, reading:

"Should no applications be received for an assignment as yard foreman the junior yard foreman working as yard helper at the terminal will be assigned. If there is no promoted yard foreman working as a yard helper at such terminal the junior

qualified available conductor working as a brakeman on the system will be assigned until the junior conductor is available."

Under that provision it was claimed that Mr. Plumtree being the junior conductor and available was obligated to protect the permanent assignment similarly, Mr. Matthews, being the junior qualified conductor working as a brakeman on the system, was obligated to protect the permanent assignment.

For the Company it was claimed no discretion rested with management in these assignments. What was done was in pursuance of an agreed upon condition. In other words, it was done in pursuance of the seniority provisions that apply down to the junior available conductor and make it necessary for him to accept the assignment. The conclusion was that travelling in such circumstances cannot be construed as caused by anything other than assignment to a position through exercise of seniority.

After a study of Article 21, Rule (c), I am convinced it was the wage agreement that required these employees to travel to these new posts. This I believe distinguishes what occurred from a mandatory order on the part of the Company that, outside any contractual requirement, places upon the employee an unwanted reassignment. In other words, travelling in such circumstances cannot be said to have been caused by anything other than assignment to a position through exercise of seniority.

For these reasons this claim must be denied.

J. A. HANRAHAN
ARBITRATOR