

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 160

Heard at Montreal, Tuesday, July 8th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for 154 miles submitted by Engineer J.G. Woodworth when not called for a sixth shift in yard service.

JOINT STATEMENT OF ISSUE:

Under the Mileage Regulations Engineer Joudrey was to be added to the Engineers' spare board at Bridgewater, N.S., at midnight, September 20, 1968. In error Enginner Wentzol was added to the sparo board.

An Enginner was required for a yard shift at 0515 hours, Saturday, September 21. Engineer Wentzel from the spare board was used.

Engineer J. G Woodworth, who was assigned to a five-day week yard assignment - Monday to Friday - alleged there was a violation of Article 48 of the Collective Agreement when he was not called for the yard shift at 0515 hours on September 21. Since it would have been his sixth shift in his work week, he submitted a time and one-half claim for 154 miles.

The Company declined payment of the claim.

FOR THE EMPLOYEES:

(Sgd.) D. E McAVOY
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) K. L. CRUMP
ASSISTANT VICE PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt	Labour Relations Assistant, C.N.R. Montreal
B. Noble	Senior Agreements Analyst, C.N.R. Montreal

And on behalf of the Brotherhood:

D. E. McAvoy	General Chairman, B. L. E., Montreal
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AWARD OF THE ARBITRATOR

Article 48 of the collective agreement provides as follows:

- "48.1 Regularly assigned engineers will be permitted to work a sixth shift in their work week either between shifts or on an assigned rest day when there are no spare engineers available, provided the following conditions are fulfilled:
- (a) Engineers desiring such work will make application in writing to work a sixth shift in the work week.
 - (b) The senior engineer so available will be called when such call will not interfere with him filling his regular assignment.
 - (c) An engineer who has indicated that he is available for such work will accept all calls until he cancels his application in writing.
 - (d) Engineers who fail to respond to calls will not again be called until they have indicated in writing that they are again available."

The grievor, a regularly assigned engineer, had worked five shifts during the week in question. If no spare engineers were available, he would have been entitled to be called to work a sixth shift on September 21, in accordance with Article 48. He would have been entitled to be paid at the rate of time and one-half in such a case. The Company would not be required to call the grievor, however, unless there were no spare board engineer available.

At the time in question, Engineer Joudrey ought to have been listed as the spare board engineer. He had arrived at the terminal on September 19 on his former assignment, and the assignment's days off were Friday and Saturday. He had not booked off. It is agreed that Engineer Joudrey was entitled to be called for the assignment in question. If he had been called and had worked the assignment then it is clear the grievor would have had no claim. However, Engineer Joudrey was not called, but Engineer Wentzel was put on the spare board in his place. This was an error, and the Company acknowledged that Engineer Joudrey might properly have made a claim for the work which he lost. It is, in effect, the grievor's claim that he, rather than Engineer Wentzel, ought to have had the benefit of the Company's error.

This claim can only succeed if the rights of Engineer Joudrey are ignored. That such rights were, in error, ignored by the Company does not alter the fact that such rights existed. The remedy for the violation of such rights lies in a claim by Engineer Joudrey. The grievor's case must be based on Article 48, and under that article it was Engineer Joudrey, not the grievor who was entitled to be called. Placement on the spare board was a matter of seniority as between Engineer Joudrey and Engineer Wentzel. In the absence of Engineer Joudrey, then, Engineer Wentzel would properly have been called. Therefore, it must be concluded that in either case there was a spare engineer available, and that the grievor was not entitled to be called under Article 48 in those circumstances.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR