

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 400

Heard at Montreal, Tuesday, March 13, 1973

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim for payment of one hundred and six (106) miles by brakeman C. Anderson as per Article 39.03 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On August 14, 1972, brakeman Anderson submitted a time claim for three hundred and eighteen (318) miles. Time ticket was returned marked changed as shown deduct one (1) day booked twenty-four (24) hours rest.

The Union contends that brakeman Anderson is entitled to twenty-four (24) hours rest under the Collective Agreement and that the Railway should not deduct any mileage for such.

The Railway contends that by booking twenty-four (24) hours rest Mr. Anderson was not available as per Article 39.03 of the Collective Agreement and therefore not entitled to guarantee for that day.

The Union filed a grievance. The Railway rejected the claim.

FOR THE EMPLOYEES:

(SGD.) J. J. SIROIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. L. MORIN
SUPERINTENDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

J.	Bazin	Counsel - Montreal
P. L.	Morin	Superintendent, Labour Relations, QNS&L RLY., Sept-Iles
F.	LeBlanc	Labour Relations Assistant, QNS&L RLY., Sept-Iles, Que.
T.	Leger	Labour Relations Assistant, QNS&L RLY.,
W.	Adams	Trainmaster, Train Movements, QNS&L RLY.,
R.	Deschenes	Chief Crew Dispatcher, QNS&L RLY.,

And on behalf of the Brotherhood:

J. J. Sirois

General Chairman, U.T.U.(T) - Sept-11es, Que.

AWARD OF THE ARBITRATOR

Article 39.03 of the collective agreement provides as follows:

"Trainmen in all service other than work, road switcher or way freight service (see paragraphs 39.01 and 39.02 of this Article) will be paid not less than the equivalent of one thousand and five hundred (1500) miles for each two (2) week pay period, if established and available. Such trainmen available only part of pay period shall be credited, prorata, with the days available."

The grievor was entitled to payment pursuant to this provision. he was at work during the pay period, and would be entitled to the minimum payment there referred to, "if established and available". There is no question in this case as to the grievor's being "established". He did, however, book rest during the pay period, and the Company takes the position that because of that, he was available for only part of the pay period and that his entitlement to payment pursuant to Article 39.03 should be prorated accordingly.

It is agreed that the grievor properly booked rest pursuant to Article 16.01 of the collective agreement, which provides as follows.

"Trainmen will have the right to book rest at terminals after ten (10) hours on duty or on completion of trip and work required with their train when completed in less than ten (10) hours and will not be required to leave terminal until they have had up to nine (9) hours rest, except that at home terminal may have up to twenty-four (24) hours rest. In no case if rest is booked shall it be for a period of less than six (6) hours. Rest must be in even hours and once booked may not be cancelled and shall be exclusive of call time."

In my view, where the collective agreement requires that an employee be "available" for work, that term must be understood as referring to availability to respond to a proper call to work in accordance with the terms of the agreement. Here, the grievor properly booked rest as the agreement provided he might do. It was not then open to the Company to call him to work. In these circumstances, the question of "availability" within the meaning of Article 39.03 does not arise.. The need for rest is contemplated by the agreement as a natural incident of employment, and where an employee properly avails himself of the provisions of the agreement in that regard, he cannot be said to have subjected his minimum entitlement for the pay period to pro rata reduction. In this respect I agree with the Union that booking rest may be contrasted with "booking off", whereby an employee does render himself unavailable, and his minimum entitlement subject to pro rata reduction. Booking rest, it may be observed, can only be done in conformity with the provisions of the collective agreement in that connection.

For the foregoing reasons, it is my conclusion that the grievance

must be allowed.

J. F. W. WEATHERILL
ARBITRATOR