CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 481

Heard at Montreal, Tuesday, November 12th,1974

Concerning

ONTARlO NORTHLAND RAlLWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims for general holiday pay January 1, 1974, Brakemen W. Blackburn, H. Middaugh, J. W. Black and W. G. McCulloch.

JOINT STATEMENT OF lSSUE:

Brakemen W. Blackburn, H. Middaugh, J. W. Black and W. G. McCulloch were regularly assigned Brakemen in pool service with home terminal at Englehart. On January 1, 1974 each was called in seniority order for service as Conductor on Traln No. 283. Each man declined and a Junior Conductor manned the train.

When the four Brakemen submitted tickets for holiday pay January 1, 1974 the company declined payment stating that they were not available for duty under Section 2(c) of Rule 107 of the Collective Agreement. The union filed a grievance, the company rejected the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) C. G. JOHNSTON	(SGD.) F. S. CLIFFORD
GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company.

A. Rotondo	System Labour Relations Officer, O.N.R., North Bay
G. T. Nudds	Superintendent, O.N.R., Englehart

And on behalf of the Brotherhood:

C. G. Johnston -	General Chairman, U.T.U.(T) - Englehart, Ont.
G. W. McDevitt -	Vice President, U.T.U., Ottawa
H. Middaugh -	Legislative Representative, U.T.U.(T) - Englehart

AWARD OF THE ARBITRATOR

Section 2(2) of Rule 107 is as follows..

"2. ln order to qualify for pay on any of the holidays specified in Section 1, an employee shall have completed 30 days

of continuous employee relationship and in addition:

(a) Shall commence a shift or tour of duty on the general holiday:

or

(b) Shall be entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday,

and

(c) Unless cancelled, shall be available for duty on such holiday if it occurs on one of his work days excluding vacation days.

An employee under rest for any portion of a holiday where the rest booked is 12 hours or less consecutive with his last shift or tour of duty shall not be considered unavailable, under this Clause (c), because of such rest period."

This Clause (c) shall not apply in respect of an employee who is laid off or suffering from a bona fide injury or who is hospitalized on the holiday."

The grievors had completed 30 days of continuous employee relationship and had been entitled to wages for the period referred to in Section 2(b). The proviso set out in the last paragraph of Section 2(c) did not apply in their cases. The holiday in question was a "work day" for the grievors, at least in their capacity as brakemen. They were regularly assigned in pool service as brakemen on unassigned freight crews. The question to be determined is whether they were "available for duty" on January 1, 1974.

On that day the grievors were called, as is set out in the joint statement of issue, for service as Conductors. It is important to set out the circumstances. Mr. McCulloch was not available for any service, and his claim was withdrawn. The others, it appears, declined a call as conductor subject to a junior employee responding to such a call. The Company acknowledges that a senior man classed as a conductor may refuse to take out a run as a spare conductor, when called, but that he can only do so where a junior man is available to take the run. The matter of calling crews is dealt with generally in Rule 55, which is to be read together with the "interpretation" which follows it. The "interpretation" includes Clause (g) which provides that where a brakeman declines service as a conductor, his standing as a brakeman will not be affected. This does not, however, alter the obligation which that employee may have to accept a call as a conductor (a call to which, in some circumstances, he may be entitled), where no Junior man is available.

ln the instant case, the Company takes the position that once a senior man in the grievors' position "passes" his call as a conductor, he is then considered "unavailable". I think that it is not enough to reply that he would still be available as a brakeman. A complete refusal to accept a call as conductor might well, in the

circumstances described, Justify concluding that the employee was unavailable within the meaning of Section 2(c). of Rule 107. But I am also of the view that where a senior classed man "passes" his call in the hope that a junior will accept it, it cannot then be said that he is necessarily unavailable. If no Junior man is available, then of course the senior man must accept the call. If he then refuses, or if he in fact seeks to avoid his responsibility by making himself unavailable, then he is indeed "unavailable" for duty, and would have disentitled himself to holiday pay.

In the instant case it has not been shown that brakemen Blackburn, Middaugh and Black were indeed unavailable for duty within the meaning of Section 2(c) of Rule 107 on January 1, 1974. The train was manned by a junior conductor. In the circumstances, it is my conclusion that they were entitled to general holiday pay for the day in question and I so award.

J. F. W. WEATHERILL
ARBITRATOR