CANADlAN RAlLWAY OFFICE OF ARBITRATION

CASE NO. 584

Heard at Montreal, Tuesday, December 14th, l976

Concerning

ALGOMA CENTRAL RAlLWAY

and

UNITED TRANSPORTATTON UNION (T)

DISPUTE:

Runaround claim submitted by Yard Foreman S. Foster when not called for Spare Work, 11:00 p.m. Yard on February 23, 1976.

JOINT STATEMENT OF ISSUE:

On Monday, February 23, 1976 a vacancy occurred for the position of Yard Foreman in the crew scheduled to commence work at 11..00 p.m. that night Spareboard Trainran L. Johnson was called and filled the vacancy.

The Brotherhood contends that the Company should not have called Spareboard Trainman Johnson as the Spareboard is not a Conductor's Spareboard.

The Company contends that the Memorandum of Agreement dated May 4, 1964 concerning the application of Article 106(a) and 87(i) is applicable and that Yard Foreman S. Foster was not entitled to be called for this spare shift on his days off.

The Organization contend that Article 107 was violated by the Company and that similar claims have been paid in the past therefore this claim should be paid. Payment of the claim was declined by the Company.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) J. Sandie	(Sgd.) S. A. Black
General Chairman	General Manager-Rail Division

There appeared on behalf of the Company:

V. E. Hupka	Manager Industrial Relations, AC.Rly., Sault Ste. Marie, Ont.
N. L. Mills	Superintendent-Transportation, A.C.Rly., Sault Ste. Marie, Ont.

And on behalf of the Brotherhood:

J. Sandie	General Chairman, U.T.U.(T) - Sault Ste. Marie, Ont.

AWARD OF THE ARBITRATOR

The work in question, that of a yard foreman, was "yardmen's work" within the meaning of Article 107, which is as follows:

"ARTICLE 107 - Yardmen's Work Defined -

Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yardmen are employed, be considered as service to which yardmen are entitled, but this is not intended to prevent trainmen from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

At points where yardmen are employed and a spare list of yardmen or a Joint spare list from which yardmen are drawn is maintained, yardmen will, if available, handle work, wreck, construction, snow plow and flanging service other than that performed continuous with a road trip in such service, and be paid at yard rates and under yard conditions."

Temporary vacancies for such work are to be filled having regard to the provisions of the collective agreement. The material provisions are articles 106 and 87 (i), to be read in the light of the material portion (paragraph 3) of a memorandum of agreement dated May 4, 1964, dealing with the matter. Article 106 (a) is as follows:

"(a) Temporary vacancies and temporary assignments of four (4) working days or less for yard helpers will be manned by qualified men from the joint spare board first-in, first-out. Such vacancies for yard foreman will be filled by the senior qualified man working as a yard helper on the same shift in the particular yard; if there is no qualified man working as a yard helper in such yard, the senior available man not assigned as a yard foreman in the terminal will be used."

Article 87 (i) is as follows:

"(i) Except as provided in Article 106 in the event that spare board becomes exhausted, and it is necessary to call a regularly assigned yardman on one or both assigned rest days, the senior available man will be called, provided he has advised the yardmaster or his supervisor in writing on completion of his work week that he will be available for call, and that such work will not interfere with his regular assignment."

Paragraph 3 of the memorandum is as follows:

"3. If a qualified Yard Foreman cannot be obtained for the spare shift under Items 1 and 2, then we revert to Article 87 (i) and the senior available qualified man on his rest days, who has signified his availability for spare work in writing, on completion of his work week, and if such spare work does not interfere with his regular assignment, is entitled to the work. In the event that this man is not available when

called, then you work down the list of assigned yard men who have signified availability for work on their days off in order of seniority."

Certainly, as the Union argued, it is persons on the yardmen's list who are entitled to first consideration for these calls. Assignment of conductors must defer to assignment of persons entitled to be called from the yardmen's list. In the instant case, the Company acknowledges that it may have erred in calling Conductor Johnson for the assignment in question.

lt does not follow, however, that the grievor's own claim is entitled to succeed. Having regard to the nature of his own assignment, and to the fact that he had not signified in writing his availability for work on a rest day, it must be concluded that the grievor himself was not entitled to be called, under the terms of the collective agreement.

This case is not, then, on all fours with Canadian Railway Board of Adjustment No.1 Case No. 744 , where in somewhat similar circumstances the senior qualified available yardman was run around. The claim was allowed in that case, and if the grievor had complied with the provision of the agreement relating to the expression in writing of his availability, then the situation would be analogous, and his claim would succeed. That is not the case, however, and the particular claim must fail, although the Union's general contentions would appear to have weight.

For the foregoing reasons the grievor's claim is denied.

J.F.W. WEATHERILL
ARBITRATOR