

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 613

Heard at Montreal, Wednesday, June 15, 1977

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Payment of guarantee for employees on the spare board.

JOINT STATEMENT OF ISSUE:

Trainman Belanger was recalled and reported for December 15, 1976. He made one trip, 612 miles, and arrived Sept-11es 0525, December 19th, at which time he was 60 times out. On December 24th, he booked sick at 0050 at which time he was first out.

The Union claims that this employee was available and ready to work up to the date that he booked sick and should be paid accordingly. The Railway maintains that this employee, by booking sick as he was first out, made himself unavailable for work for the purpose of computing guarantee time as he was "playing the board" and had no intention of being available for work. The grievance was denied.

FOR THE EMPLOYEE:

(SGD.) G. ROBICHAUD
VICE-CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LEBLANC
SUPERINTENDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	-	Counsel	-	Montreal
G. A. Dolliver	-	Superintendent, Train Movement,		QNS&L.Rly.,
		Sept-11es		
J. Y. Tardif	-	Assistant - Labour Relations,		"
		Sept-11es		
C. Nobert	-	Assistant - Labour Relations,		"
		Sept-11es		

And on behalf of the Brotherhood:

R. Cleary	-	Counsel	-	Montreal
G. Robichaud	-	Vice-Chairman, U.T.U.(T)	-	Sept-11es, Que.

AWARD OF THE ARBITRATOR

Article 39.03 provides generally for the guarantee of which the grievor claims the benefit. He would be entitled to the guarantee if he was "established and available" during the period in question. The Company's position is that the grievor was not "available", since he booked sick just as he became first out, which suggests that he was "playing the board", so as to have the benefit of the guarantee without actually having to work.

A false claim of illness in such circumstances might well be part of an attempt to defraud the Company, and would justify severe discipline, if proved. This is not the sort of matter in which presumptions should be lightly made, or which should be decided on the basis of suspicions. Article 39.03 itself deals with the case where a trainman is available for only part of the pay period: his guarantee is to be pro-rated to the portion of the period when he was available.

Article 39.03 is as follows:

"39.03 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."

Article 39.04 deals further with such a situation, as follows:

"39.04 It is understood that spare board trainmen who book off during a period will not be considered as available for purpose of computing guarantee time until the turn for which they would have been ordered has returned to Sept-Iles or until they take such turn on line."

Booking off, whether by booking sick or otherwise, does not, therefore, have the effect of cancelling a trainman's entitlement to the guarantee for the whole of the pay period involved. Its effect is rather to reduce the amount of the guarantee for that period, according to the length of time for which he is not available, and this time includes not only the time he is in fact unavailable for illness or personal reasons, but also the time when he is unavailable by reason of the operation of Article 39.04.

It may be that an employee is in fact unavailable, even although he may not have so advised the Company by booking off. It is understandable that there would be a suspicion in this case that the grievor did not intend to do any further work during the pay period in question. It cannot properly be concluded on the material before me, however, that the grievor was in fact unavailable prior to the time when he booked sick.

In the circumstances of this case, then, it appears that the grievor was entitled to the benefit of the guarantee for the pay period in

question, subject to its proration pursuant to Article 39.03. The grievance is therefore allowed.

J. F. W. WEATHERILL
ARBITRATOR