CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 730

Heard at Montreal, Tuesday, December 11, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Trainmen A.P. Broda and J.L. Koshey for 100 miles each, October 24, 1978 and November 7, 1978.

JOINT STATEMENT OF ISSUE:

Trains No. 554 and No. 555 operate on Sunday, Monday, Wednesday and Friday out of Melville, Saskatchewan on a regular basis. These trains also operate on Tuesdays on an "if and when required" basis.

On Tuesday, October 24, 1978 and Tuesday, November 7 1978, trains No. 554 and No. 555 were not required and did not operate. The crews were not notified that the trains would not operate on those days. Trainmen Broda and Koshey both submitted time returns for October 24, 1978 and November 7, 1978 claiming 100 miles each in accordance with Paragraph 42.2 of Article 42, Agreement 4.3.

The Company refused to pay these claims.

The Brotherhood contends that Article 42.2 of Agreement 4.3 was violated by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. H. MANCHESTER	(SGD.) S. T. COOKE
GENERAL CHAlRMAN	ASSlSTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

L. R. Weir - System Labour Relations Officer, CNR, Montreal
K. J. Knox - System Labour Relations Officer, CNR, Montreal
D. W. Coughlin - Labour Relations Assistant, CNR, Winnipeg

And on behalf of the Brotherhood:

L. H. Manchester - General Chairman, U.T.U.(T) - Winnipeg

AWARD OF THE AHBITRATOR

Article 42.2 of Agreement 4.3 is as follows:

"42.2 Except in unforeseen circumstances, and emergencies such as

accident, locomotive failure, washout, snow blockage or where the llne is blocked, if less than 5 hours' notice of cancellation is given, prior to the advertised departure time of the assignment, trainmen will be paid for each tour of duty lost 100 miles at the minimum rate applicable to the class of service to which assigned. The provisions of this paragraph apply only at the home terminal of an assignment and do not apply where trainmen are deadheaded from the home terminal to the away-from- home terminal to handle the return trip of the assignment."

As the joint statement makes clear, no "Notice of Cancellation" of the grievors' assignment was given in respect of the days referred to. The issue is whether or not there was a requirement to give such notice, or, put another way, whether or not there was in fact a "cancellation".

The Union contended that the bulletin establishing the grievors' assignment was an improper one, because it provided for work on an "if and when required" basis. The assignment regularly operated as the joint statement indicates, on Sundays,Mondays, Wednesdays and Fridays. Certainly notice of cancellation as contemplated by Article 42.2 would have to be given in the event of the cancellation of the assignment on any of those days. On Tuesdays, however, the assignment operated only "if and when required".

Such an assignment is not expressly contemplated by the collective agreement - that is, there is no express provision for assignments on an "if and when required" basis. There might, in other circumstances, be a question as to the propriety of a bulletin advertising an assignment which was completely, or substantially on an "if and when required" basis. The fact that the collective agreement does not expressly refer to such assignments does not in itself make the assignment improper: the collective agreement does not refer to the content of assignments, which will vary with the circumstances of every case. In the instant case there were in fact regularly scheduled runs on four of the five days provided for in each week. Those holding the assignment would be entitled to the full benefit of the applicable guarantee provisions. In the circumstances of this particular case, then, it is my view that the assignment itself, one day of which was to be scheduled "if and when required" was one which it was open to the Company to make and to bulletin, and that it was not in violation of the collective agreement.

The grievors' assignment was, in respect of one day per week, to work "as and when required". That was the position announced by the bulletin and for which the grievors applied. ln this respect, the remarks made in C.R.O.A. Case No. 361 apply.

The nature of an "as an when required" , assignment is that it does not run unless it is required. What would be appropriate notice of the requirement, and what would be the extent of the employees' obligation to hold themselves available for work are questions which do not arise in this case. lt is clear, however, that with respect to the days in question the grievors had not been advised that they would be required. On those days, there was no assignment to be cancelled, and so there was no requirement of notice of cancellation

pursuant to Article 42.2.

In the circumstances of this particular case, then, there has been no violation of the collective agreement, and the grievances are therefore dismissed.

J. F. W. WEATHERILL
ARBlTRATOR