CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1018

Heard at Montreal, Tuesday, December 14, 1982

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim by the Brotherhood of Locomotive Engineers for continuing employment of Assistant Locomotive Engineers.

JOINT STATEMENT OF ISSUE:

Locomotive Engineers who are not set up on the Locomotive Engineer's working list have been employed as Assistant Locomotive Engineers under the terms of Memorandums of Agreement dated April 9, 1974 and May 17, 1978. Locomotive Engineers hired since April 1, 1978 have not been retained as Assistant Locomotive Engineers in yard service except at the Company's discretion.

The Company served notice that they would be exercising their discretion with respect to the employment of Assistant Locomotive Engineers. The Brotherhood of Locomotive Engineers objected to this decision and contend that theCollective Agreement provisions provide for the continuing employment of Assistant Locomotive Engineers except that those hired After April 1, 1978 need not be retained in yard service.

Locomotive Engineers not set up on the Locomotive Engineer's working list who do not stand for work as Assistant Locomotive Engineers in Through Freight or Wayfreight Service under specific terms have been laid off by the Company.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
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| (SGD.) P. M. MANDZIAK | (SGD.) S. A. BLACK |
| General Chairman | Vice President - Rail |

There appeared on behalf of the Company:

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| Victor E. Hupka | - Manager, Industrial Relations, ACR, Sault Ste. Marie |
| Newell L. Mills | - Superintendent, Transportation, ACR, Sault Ste. Marie |

And on behalf of the Brotherhood:

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| P. M. Mandziak | - General Chairman, BLE, St. Thomas |
| J. B. Adair | - Vice-President, BLE, Ottawa |

H. D. Streich - Local Chairman, BLE, ACR

AWARD OF THE ARBITRATOR

This matter is governed by a Memorandum of Agreement dated May 17, 1978. Paragraph (4) of that Memorandum is as follows:-

> "(4) When the employees referred to in Section 1 are not set up on the Locomotive Engineers' working list, they may, at the discretion of the Company, be employed with Locomotive Engineers their senior in classes of service and at locations as designated by the Company to maintain and further improve their level of skill and competence in all classes of service.
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> NOTE: The intent of the foregoing is that these employees will be permitted to work in Mainline and Roadswitcher service only - providing that there is a vacancy. It is not intended that Yard Engines will be double manned other than at the discretion of the Company."

The "employees referred to in Section 1" are Locomotive Engineer Trainees hired subsequent to April 1, 1978, and who have successful completed the Company's training program. The Company has now laid off certain of such employees, and it is the thrust of the grievance that the Company was required to retain them in service. It was the Union's contention that "the discretion of the Company" referred to in paragraph 4 of the Memorandum was a discretion with respect to the assignment of such persons, not one with respect to their employment. As a matter of interpretation of the language of the provision, I am unable to agree with that contention, since the provision sets out that employment "in class of service and at locations" is to be "as designated by the Company". It is, indeed, "at the discretion of the Company" that the persons in question "may - - - be employed".

No doubt, at the time such persons were hired and trained, they were advised that they would not, at the completion of training, simply be laid off. It was then expected that they would be retained in employment and so they were. Now that times have changed, those expectations can no longer be realized. The Memorandum of Agreement does not set out a guarantee of employment, even if one party to the negotiations may have thought that it did. While the Collective Agreement does contain certain earnings guarantees for regularly assigned employees, it does not contain guarantees of employment for all employees, and the Memorandum of May 17, 1978 does not protect all Engineer Trainees against the posibility of layoff. It would take very clear language to establish that, whereas the actual language of the Memorandum gives a discretion to the Company in that regard.

For the foregoing reasons, it is my conclusion that there has been no violation of the Collective Agreement. The grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.