CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1076

Heard at Montreal, Wednesday, April 13th, 1983
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN RAIL DIVISION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer E. G. Willey submitted account alleged violation of Paragraph 84.1 of Article 84, Agreement 1.1, when Train No. 506-0 was cancelled after regular scheduled departure time due to a blockage in the main line.

JOINT STATEMENT OF ISSUE:

During the period April 18-19, 1982, a flooding situation developed at and near the area of Richmond, Quebec which resulted in the blockage of the main line. Several regularly scheduled trains were cancelled and others were delayed substantially.

Locomotive Engineer E. G. Willey was regularly assigned to Train No. 506-0 Richmond. Train No. 506-0 was scheduled to depart Richmond at 1030 hours, April 19, 1982. He would normally be called at 0830 hours for 1030 hours pursuant to Article 62. Train No. 506-0 was cancelled at approximately 1350 hours on Monday, April 19, 1982. Locomotive Engineer Willey was subsequently called and notified of this cancellation. This was the first official communication to Locomotive Engineer Willey that his run was to be cancelled and/or delayed.

Locomotive Engineer Willey claimed 100 miles under Article 84.1. The Company declined payment on the basis that the line was blocked by a washout and that it was only at 1530 hours that the Company finally determined that Train No. 506-0 would have to be cancelled.

The Brotherhood referred this grievance through the grievance procedure alleging that:

(a) the Company was in violation of Paragraph 84.1 of Article 84 in that the circumstances of this case did not amount to an emergency within the meaning of Article 84 and,

(b) that this was not an emergency and/or unforeseen situation within the meaning of such as described in K.L. Crump's letter of April 27, 1971.

The Company declined the grievance.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) P. M. MANDZIAK
General Chairman

(SGD.) D. C. FRALEIGH
Assistant Vice-President,
Labour Relations.

There appeared on behalf of the Company:

K. R. Peel	- Counsel, Toronto
M. Delgreco	- Senior Manager Labour Relations, CNR, Montreal
H. J. Koberinski	- Manager Labour Relations, CNR, Montreal
P. J. Thivierge	- Manager Labour Relations, CNR, Montreal
W. A. McLeish	- Manager Labour Relations, CNR, Toronto
A. Y. Brabant	- Trainmaster, CNR, Richmond
J. A. Sebesta	- Co-ordinator Transp. - Special Projects, CNR, Montreal
G. Blundell	- System Labour Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

M. Church	- Counsel, Toronto
P. M. Mandziak	- General Chairman, BLE, St. Thomas
D. Glover	- Local Chairman, BLE, Belleville

AWARD OF THE ARBITRATOR

Article 84.1 of the Collective Agreement is as follows:

"ARTICLE 84

Cancellation of Regular Road Assignments

84.1 Locomotive engineers in regularly assigned road service will be given as much advance notice as possible when assignments are cancelled. Except in emergencies, such as accident, engine failure or washout, or where the line is blocked, if less than 4 hours' notice of cancellation is given prior to the time required to report for duty, locomotive engineers on regular assignments in road service will be paid a basic day at the minimum rate applicable to the class of service to which assigned for each tour of duty lost."

From the facts set out in the Joint Statement, it is clear that less than four hours' notice of cancellation was given the grievor. He would, therefore, be entitled to payment for a basic day unless the Company can bring the case within the proviso, relating to "emergencies" That term replaces the expression "unforeseen circumstances" used in an earlier Collective Agreement. As the Company set out in a letter dated April 27, 1971, that expression was not intended to cover up errors in judgement or poor management. The two expressions are not synonymous, and the 1971 letter perhaps not really pertinent to the interpretation of the existing Collective Agreement.

In the instant case, I have no doubt that there was an emergency within the meaning of' Article 84.1. The Sherbrooke Subdivision, on which the grievor was to operate, was declared impassable at 1100 on the preceding day. During the day of April 19, however, the flood waters abated. There was, it seems, some chance that the grievor's train might run, although certainly not on time. The grievor was regularly called at 0830 for 1030. On that day, he was not called. At about 1300 the Sherbrooke Subdivision was clear of flood waters, although it had not yet been made passable. That would not occur until about 1700. Since the railway operations at Kruger Paper, the industry whose operations were the main reason for the grievor's assignment, ended at 1700, it was decided (just before 1350), that the grievor's assignment should be cancelled, and that was done.

It was the Union's contention that the exemption provision of Article 84.1 applies only within the last four hours prior to an employee's regularly scheduled time required to report for duty. The grievor's train, of course, was not cancelled within that period. While one can understand the arguments which might be advanced in favour of a provision to the effect urged by the Union that is not, with respect, what the Collective Agreement provides for in this case. It sets out a general provision for payment where "less than four hours' notice of cancellation is given prior to the time required to report for duty". Certainly, the instant case is one in which less than that notice was given. The general entitlement to the payment then set out arises. All that is subject, however, to the proviso, "Except in emergencies, such as accident, engine failure or washout, or where the line is blocked." The instant case was, I find, one of "emergency" within the meaning of that provision. Accordingly, the case comes within the exemption, and the right to payment does not arise.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.