CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1317.

Heard at Montreal, Tuesday, January 8th, 1985.
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor D. J. Kobe and crew, Sarnia, dated May 4, 1983, for 332 miles at the through freight rate of pay.

JOINT STATEMENT OF ISSUE:

On May 4, 1983, Conductor D. J. Kobe, Brakemen J. Ross and D. J. McCarty were ordered in straight away service and reported for duty at 1500 hours to man Train 410 operating from Sarnia to MacMillan Yard. As the train was leaving Sarnia, engine failure developed in the locomotive consist. Consequently, Train 410 was backed into Sarnia Yard to obtain a replacement locomotive consist.

At approximately 1830 hours, Conductor Kobe and crew were notified of the cancellation of their tour of duty.

Conductor Kobe and crew claimed 432 miles at the through freight rate of pay representing loss of earnings for two tours of duty, Train 410, Sarnia to MacMillan Yard and the return trip, MacMillan Yard to Sarnia.

The Company disallowed the claim and compensated Conductor Kobe and crew a basic day at the through freight rate of pay in accordance with Article 61.4 of Agreement 4.16.

The Union contends that Conductor Kobe and crew were improperly cancelled and were entitled to man Train 410 in accordance with Article 6.5 of Agreement 4.16 and asserts, therefore, that the employees are entitled to the additional 332 miles.

The Company declined payment.

FOR THE UNION:	FOR THE COMPANY:
(Sgd.) T. G. HODGES FOR: General Chairman	(SGD) D. C. FRALEIGH Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

D.W. Coughlin, Manager Labour Relations, CN, Montreal.
J.B. Bart, Labour Relations Officer, CN, Montreal.
J.A. Sebesta, Coordinator Transportation, CN, Msntreal.

And on behalf of the Union:
T.G. Hodges, Vice General Chairman, UTU, Toronto.

AWARD OF THE ARBITRATOR

The basic issue in this case is whether the Company was warranted in paying the grievors solely the rate for the basic day pursuant to Article 61.4 of Agreement 4.16 after the cancella- tion of their run on May 4, 1983. And it appears that that question turns on whether or not the reason that prompted the company to "alter" their call was prompted for causes exempting it from pay- ment of the anticipated earnings for the entire run under Article 6.5 of the Agreement 4.16:-

> "6.5 Employee will be notified, when called (as provided by Article 61, Calling), whether the tour of duty for which they are being called is in straight-way or turn-around service and they will be compensated according to such notification. Such notification will include the point for which called and will only be altered where necessitated by circumstances unforeseen at the time of call, such as accident, engine failure, snow blockade or other like emergency".

It is common ground that the reason precipitating the company's decision to cancel the grievors' trip related to a breakdown of the engine of their consist. The trade union, however, argued that the exemption for that alleged reason was not justified because the "alteration" was not necessitated by an "emergency". That is to say, the material adduced herein established that after an approximate three hour delay (1830 hrs and 2120 hrs.) another engine was attached to the consist that should have enabled the aggrieved crew to complete the originally assigned task. Or, to be more precise, the emergency allegedly occasioned by the first engine's breakdown was eliminated thereby removing any excuse on the company's part for cancelling the grievor's run. As a result, the company should not have called in a new crew to perform the run because it was not excused by any exemption under Article 6.5 from paying the grievors the full amount of their anticipated earnings.

Apart from the very compelling concerns raised by the Com- pany in its brief with respect to the intended scope of Article 6.5, this case may be disposed of on the basis of the issues argued by the trade union in its brief. It seems to me that the clear and unambiguous language of Article 6.5 defines the conditions that give rise to the specific exemptions afforded the company under that provision. They expressly include but are not necessarily restricted to "accident, engine failure, snow blockade, or other like emergency". In this case "engine failure" clearly and directly prompted the company to alter the grievor's run by directing its cancellation. I am not required to go behind the specific cause of

the cancellation of the grievor's run to determine whether an emergency existed because the parties, in the specific circumstances of this case, have done that very thing. They have defined an expressed unforeseen circumstance that would warrant the cancellation of the run due to the emergency created by engine failure. And that is exactly what happened in this case.

It is specious in my view to argue that the engine failure is any less an emergency because the company subsequently located another engine to complete the trip. Obviously, the company was duty bound to complete the run for obvious business reasons. Surely, a bona fide effort to secure another engine to complete a business task should not be interpreted to the company's prejudice to the exemption under Article 6.5. Indeed, the delay that was occasioned in finding a replacement engine may in fact have worked to the company's prejudice had it as- signed the completion of the run to the grievors. In that event, the grievors may very well have "booked off", as would be their entitlement, in the middle of the run should maximum hours have been spent.

In the final analysis the availability of a back up engine does not eliminate the emergency situation that prompted the company to cancel the grievor's run. It therefore followed the company was not required to pay the grievors their antici- pated earnings of the cancelled run. I have concluded that the company complied with its obligations in paying the rate for the basic day as contemplated by Article 61.4 of the collective agreement.

The grievance is accordingly denied.

DAVID H. KATES
ARBITRATOR.