CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1319

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

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of Locomotive Engineer H. J. Biggs of St. John, New Brunswick, dated November 28th and December llth, 1982, for loss of earnings.

JOINT STATEMENT OF ISSUE:

On both November 28th and December llth, 1982, Engine Service Employee G. P. Rigby was called to work as Locomotive Engineer on the 1100 Yard assignment at St. John, New Brunswick.

Subsequently, Locomotive Engineer H. J. Biggs who had already worked six shifts in each of the applicable work weeks submitted a time return for each day, claiming that Mr. Rigby who was qualified but not set-up on the working list of Locomotive Engineers at the time, had, as a result, been improperly called. Consequently, he, not Mr. Rigby, should have been called to work those tours of duty.

The Company declined the claims on the basis that Locomotive Engineer Biggs had earned his maximum entitlement for each of the work weeks in question consistent with Article 48A of Agreement 1.1.

FOR THE BROTHERHOOD:

(SGD.) GILLES THIBODEAU
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: 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, Montreal.
H.W. Hartman, Labour Relations Officer, CN, Moncton.
B.W. Lowerison, Asst. General Supt. Transp. CN, Moncton.
And on behalf of the Brotherhood:
Gilles Thibodeau, General Chairman, BLE, Quebec.
G.F. Love, Local Chairman, BLE, Moncton.

AWARD OF THE ARBITRATOR

The question to be resolved in the circumstances described in the Joint Statement is whether the company was obliged under Article 48A of Agreement 1.1 to assign to the grievor, Locomotive Engineer H.J. Biggs, overtime work after he had completed a sixth shift beyond his regular work week. It is clear that Article 48A obliges the company in the circumstances of that provision to extend a Locomotive Engineer the opportunity to work a sixth shift beyond his regular work week at the overtime rate. The issue raised by the trade union is whether the company's obligation under Article 48A also required it to assign the grievor a seventh shift at the overtime rate. Or, alternatively, could the company look to other means to meet its manpower needs?

What the company in fact did in this case, was to assign on two occasions extra work (thereby avoiding payment of the overtime premium) to an Engine Service Employee, Mr. G.P. Digby. It is co?mxn ground that Mr. Digby is characterized as a "demoted employee". A demoted employee seems to connote an employee who is trained and qualified as a locomotive engineer and who holds seniority under the BLE Agreement but who is regularly employed (in this case as a trainman) under the UTU Agreement 4.16. It is important to note that on both occasions when Mr. Digby was assigned BLE Yard work the grievor had worked a sixth shift beyond his regular work week at the overtime rate pursuant to Article 48A of Agreement 1.1.

It is my opinion that once the company assigned the grie- vor a sixth shift, as aforesaid, no further obligation was owed to Mr. Biggs under Article 48A of Agreement 1.1. Apart from any considerations that might apply under the CANADA LABOUR CODE, I quite agree with the trade union's submissions that nothing contained in the collective agreement prevented the company from giving Mr. Biggs another overtime shift. But, that is not to say that there existed any obligation contained in Article 48A or any other provision of the collective agreement that required the company to give him a seventh shift. Indeed, the company's obligation with respect to overtime was spent after the grievor completed his sixth shift at the overtime rate.

Now, Article 101.3 of Agreement 1.1 also allows the com- pany in expressly prescribed circumstances to have recourse to the manpower assistance provided by a "demoted employee". And, when such recourse is made the company is only obliged to pay the "demoted employee" at the straight time rate. This is exactly what was done when the company elevated Mr. Digby to perform Locomotive Engineer's work in circumstances where opera- tional needs, due to manpower exigencies, required it.

It may very well be that the trade union's charge that Mr. Digby was not properly on "a working list" (denied by the company) could be authenticated. But quite frankly, that was not the original thrust of its grievance. The trade union rested its case on the perceived obligation on the company to award more overtime work to Mr. Biggs beyond a sixth shift under Article 48A of Agreement 1.1. That allegation has not succeeded and the grievance accordingly must be denied on that basis.

DAVID H. KATES
ARBITRATOR.