

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1327

Heard at Montreal, Tuesday, February 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer G. Halle for the payment of a tour of duty of 8 hours at overtime rates on May 18, 1983.

JOINT STATEMENT OF ISSUE:

On May 18, 1983, Locomotive Engineer G. Halle was assigned to the Quebec Terminal Spare Board and worked the 15.30-23.30 hours yard assignment at Joffre Yard. A vacancy occurred on the 23.30-07.30 hours yard assignment that same day. As the spare board was exhausted, an Engine Service Employee was used.

Mr. Halle claimed the payment eight (8) hours at overtime rates, alleging that the Company had violated Article 30A of Agreement 1.1 for not being called to fill that vacancy. The Brotherhood further contends that the Company must exhaust Locomotive Engineers working under the provision of Agreement 1.1 prior to calling an ESE.

The Company rejected the claim.

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, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, CNR, Montreal
P. J. Thivierge	- Manager Labour Relations, CNR, Montreal
C. St. Cyr	- Labour Relations Assistant, CNR, Montreal
P. Marleau	- Regional Coordinator - Crews, CNR, Montreal

And on behalf of the Brotherhood:

Gilles Thibodeau	- General Chairman, BLE, Quebec
Gilles Halle	- Local Chairman, Div. 558, BLE, Charny

#### AWARD OF THE ARBITRATOR

In order to determine the validity of the grievor's claim for the punitive rate under Article 30-A of Agreement 1.1 for the eight hours worked on May 13, 1983 by an Engine Service Employee, I propose to make two assumptions in the trade union's favour. The first assumption is that a BLE employee does not have to be on the spareboard in order to be available for bargaining unit work; and, the second is that, if available, the company would be required to assign him that work even if it is obliged to pay the punitive rate. Accordingly, the principal issue that I must decide is whether the grievor was "available" to accept a BLE assignment after the employer determined that the BLE spareboard had become exhausted?

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The uncontradicted evidence disclosed that at the relevant time services were needed the grievor was involved in providing bargaining unit work on a 15:30 to 23:30 shift. The work assignment for which he claims the punitive rate was the 23:30 to 3:30 shift. The evidence disclosed that he would have been required, if available, to report for duty on the second shift at 23:20 hours in order to engage in duties involved in preparation of the engine. At that particular hour (i.e., 23:20 hrs) the grievor would not have completed his first shift. As a result, despite the grievor's assurances that he was available, he was not because he was still subject to duty on the 15:30 to 23:30 shift.

Accordingly, I am satisfied that the company was free to resort to an engine service employee once it had properly determined that no bargaining unit employee was "available" to do the work.

The trade union's difficulty in the specific circumstance pertains to the notion that the services required on the later shift involved to the same engine he was assigned on the first shift. I do not doubt that in a physical sense the grievor was available to do the second assignment. However accurate that may be, I am dealing here with a technical argument. Underlying this dispute is the company's preference to pay the straight time rate to an engine service employee rather than the punitive rate to the grievor for the same eight hour shift. And, because the grievor was subject to duty on his first shift at the time his services would have been required for the second shift he cannot be concluded to have been "available" to report at the required time for that shift.

For that reason the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.