CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1336

Heard at Montreal, Tuesday, March 5, 1985

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim for one day's wages, 8 hours, for the senior spare and relief employee at Timmins for September 24, 1984.

JOINT STATEMENT OF ISSUE:

On Monday, September 24, 1984, one position of Motorman, Timmins, was vacant and blanked by the company. The union claimed that the senior spare and relief employee should have been called to fill the position. The company does not agree.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. N. STOL	(SGD.) P. A. DYMENT
Representative	General Manager

There appeared on behalf of the Company:

A. Rotondo	- Manager Labour Relations, ONR, North Bay
W. R. Deacon	- Trainmaster & Rule Instructor, ONR, North Bay

And on behalf of the Brotherhood:

T. N. Stol	- Representative, CBRT&GW, Toronto

AWARD OF THE ARBITRATOR

The essence of the trade union's grievance in this case is whether Article 5.5 of the collective agreement (particularly Note "B") requires the company to fill a temporary vacancy occasioned by the protracted absence of the incumbent due to compensation leave.

In the particular circumstances of this case the company claims that at all material times that the work could be performed by existing staff and therefore the position vacated by the incumbent need not have been filled.

This issue has been raised on previous occasions and in different contexts.

In the one case in CROA Case No.1287, it was indicated that a

provision analogous to Article 5.5 merely directs the employer with respect to the manner in which temporary vacancies are to be filled. Article 5.5 does not connote any substantive right requiring the company to fill/temporary vacancy particularly where there is not work to be performed. Indeed, in CROA Case No. 233 the Arbitrator stated:

> "The work available could be handled by the existing force and there was no actual vacancy temporary or otherwise to be bulletined."

Because the company did not require a replacement for the employee that was absent on compensation leave, there was no requirement contained in the collective agreement to compell it to call an employee off the spareboard to perform the functions of that job. Indeed as stated in CROA Case No. 1287;

> "I can discern nothing in the note that is designed to usurp the company's discretion to determine that a position is redundant by virtue of a business decline. Or, from another perspective, there would have to be very clear language to compel me to conclude that the employer must fill a position in circumstances where there is no job to be performed."

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.