CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1378

Heard at Montreal, Tuesday, June 11, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer A. Maxton of Thunder Bay for 100 through freight miles under the "Note" in Article 28.2, Agreement 1.2.

JOINT STATEMENT OF ISSUE:

On October 18, 1982, a work train assignment was bulletined to com?ence on or about October 25, 1982. The results were posted on October 23, 1982, and Locomotive Engineer Maxton was the successful applicant. This work train assignment commenced on November 12, 1982, and was filled from the spare board as Locomotive Engineer Maxton was unavailable since he was out on another assignment in through-freight service. On November 13, 1982, upon arrival on his return assignment in through-freight service at 0030, Locomotive Engineer Maxton was advised that the work train assignment to which he was the successful applicant would be ordered for 0530 hours that morning.

Locomotive Engineer Maxton immediately booked 8 hours rest, resulting in being unavailable for the work train assignment and subsequently claimed 100 miles under the "Note" in Article 28.2 which was declined by the Company.

The Brotherhood contends that Locomotive Engineer Maxton was assigned to Work Train Service under Article 63.8 when notified upon arrival of his train at 0030, November 13, 1982. The Brotherhood further contends that the claim for 100 miles is proper under the "Note" in Article 28.2 as he was assigned to work train service, booked 8 hours rest and was required prior to the expiration of the rest period.

The Company has declined the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) J. W. KONKIN	(SGD.) D. C. FRALEIGH
General Chairman	Assistant Vice-President
	Labour Relations.

There appeared on behalf of the Company:

M. Healey - Manager Labour Relations, CNR, Montreal
M. Delgreco - Senior Manager Labour Relations, CNR, Montreal

G. Blundell - Labour Relations Officer, CNR, Montreal
J. A. Sebesta - Coordinator - Transportation, CNR, Montreal

And on behalf of the Brotherhood:
J. W. Konkin - General Chairman, BLE, Winnipeg
P. M. Mandziak - General Chairman, BLE, St. Thomas

AWARD OF THE ARBITRATOR

The issue raised in this case is whether the grievor, Locomotive Engineer Moxton, is entitled to be paid a basic day's pay for the tour of duty he missed on "a train service"assignment because he booked rest. The Note attached to Article 28.2 of the collective agreement reads as follows:

> ""NOTE": A locomotive engineer regularly assigned to work train service who books not more than 8 hours rest at a home terminal and not more than 6 hours rest at other terminals and the time of reporting for duty for the next tour of duty on his assignment is prior to the expiration of period off duty for rest, thereby causing him to lose a tour of duty on his assignment, shall be paid a basic day at the minimum rate applicable to the assignment less any amount earned or payment received under other agreement provisions for each tour of duty lost on his assignment provided, that the locomotive engineer filling the vacancy was required to report for duty within 8 or 6 hours as the case may be, from the time the regularly assigned locomotive engineer booked off duty for rest."

There is no dispute that the grievor, based on his seniorit properly bid upon and was awarded the train service assignment that was "missed" on November 13, 1982. As I understood the evidence the implementation of that particular assignment was delayed for several weeks because of equipment problems. Accordingly until the problem could be overcome the grievor was compelled to return to his regular position on the spareboard until such time as the train service assignment could be implemented. In accordance with Article 63.8 of the collective agreement the grievor was entitled to treat that assignment as his own.

> "When a Locomotive Engineer books okay for a run or service, to which he is entitled or is the successful applicant for a run advertised locally or to the seniority district, he will be considered assigned to that run or service."

At the relevant time the grievor's train service assignment was implemented on November 12, 1982 he was unavailable to accept the assignm because he had committed himself to "a through freight

assignment" off the snareboard. At the termination of that assignment the grievor booked rest as was his entitlement . At that time he was informed that his train servic assignment was to resume at 0530 hours on November 13, 1982. There is no dispute that that assignment conflicted with the grievor's eight (8) hour rest period.

Accordingly, the grievor coxmnnicated his unavailability for that assignment and grieved his claim to the basic day payment under the Note to Article 28.2 of the collective agreement.

Both parties appeared to accept the notion that the grievor must be on "a train service assignment" prior to the missed assignment whose schedule conflicted with his rest period in order for him to invoke success- fully entitlement to payment for a basic day.

Moreover, if I am to accept the employer's submission as sound the grievor because he was actually involved in "a through freight assignment" prior to the missed train service assignment he cannot be concluded elegible for the payment. The grievance would then be denied. And there is no dispute that the grievor, to phrase it from a different perspective was not involved physically on a train service assignment as a part of his assigned work prior to the missed train service assignment.

But does he have to be?

In the particular circumstances of this case I am satisfied that the grievor, in accordance with Article 63.8 of the collective agreement, should be deemed "or will be considered assigned to the run or service" upon which he has successfully bid. In my view Article 63.8 is intended to protect the grievor's train service assignment notionally by operation of the collective agreement even though he may be involved in another and different assignment at the material time the train service assignment was implemented.

In mandatory terms Article 63.8 directs that the grievor is to be considered to hold the assignment for which he has successfully bid. And, the uncontradicted evidence established that the grievor had not forsaken or lost the status that had been conferred upon him by Article 63.8 because of the delay encountered by the employer in implementing the train service assignment that was awarded him.

Accordingly, even though the grievor was compelled to return to the spareboard because of that delay and was obliged to accept different assignments than a train service assignment he still was entitled to be treated by the employer as holding train service status. In that manner the collective agreement protects the grievor's rights to the benefits of the train service assignment when it was eventually implemented As a result, although the grievor in a physical sense was not involved in a train service assignment prior to his missed train service assignment of November 13, 1982 his employer was obliged by operation of Article 63.8 "to consider" him to have held that assignment.

For that reason the grievance succeeds and the grievor will be compensated a basic day's pay as requested in his grievance. I shall remain seized in the event of difficulty in the implementation of this award.

DAVID H. KATES,
ARBITRATOR.