CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1572

Heard at Montreal, Thursday, October 16, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Trainmen B. D. Bowering and A. P. Greenlees, London, Ontario, for away-from-home expenses for various dates in September 1983.

JOINT STATEMENT OF ISSUE:

On August 8, 1983, Trainmen B. D. Bowering and A. P. Greenlees were cut off the working list at London. On August 9, they were notified that their services were required at the home station of Toronto.

After reporting to and working at Toronto, Trainmen Bowering and Greenlees claimed the expense allowance of $6.00 per day pursuant to Article 72 of Agreement 4.16 for each calendar day that they worked or were available for work at Toronto during the month of September.

The Company declined payment of these claims.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) TOM 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, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal

And on behalf of the Union:

T. G. Hodges	- Vice-General Chairman, UTU, Toronto
R. A. Bennett	- General Chairman, UTU, Toronto
W. G. Scarrow	- General Chairman, UTU, Sarnia
B. Leclerc	- General Chairman, UTU, Quebec

AWARD OF THE ARBITRATOR

The grievors claim that they are entitled to $6.00 per day under the provisions of Article 72.1 of the Collective Agreement for the time they worked in Toronto as Spareboard Trainmen, in August of 1983,

away from their home base of London, Ontario.

The material establishes that the grievors were cut off from service as Trainmen on the London Spareboard on August 8, 1983. As they were entitled to do , they declined to exercise their seniority rights to bump into positions elsewhere on the seniority district, choosing instead to receive unemployment insurance benefits. In that circumstance they were, under the terms of the Collective Agreement, "cut off" and not "laid off". Because they had seniority to exercise elsewhere on the district if they so elected, they are not deemed to have been on layoff.

By letter dated August 12, 1983, the Company advised Mr. Bowering and Mr. Greenless that they were required for work in Toronto, due to a shortage of manpower at that location. Failure to respond to that call would have caused the extinguishment of their seniority rights. Having reported for work in Toronto the two employees began submitting claims for $6.00 per day for meal expenses for working away from home pursuant to Article 72.1 of the Collective Agreement. The Article provides as follows:

> "72.1 Except as provided in paragraph 72.3, an employee who is required by the Company to move from one main (home) terminal to another main (home) terminal where a shortage of employees exists, will be allowed $6.00 per day for meals where such are not provided by the Company or at the Company expense."

The Company takes the position that Article 72.3 bars the grievors' claim. It provides:

> "72.3 This Article does not apply to employees moving on their Seniority District in the exercise of seniority rights, or upon recall from layoff, or while filling vacancies at a subsidiary or out post station to the main (home) terminal except when they are entitled to an allowance at such main (home) terminal."

The Company maintains that in the circumstances described the grievors were "employees moving on their seniority district in the exercise of seniority rights..." within the meaning of Article 72.3 of the Collective Agreement. The Union maintains that the grievors were not "exercising their seniority" when in fact they were being forced to accept a recall from "cut off" because of their seniority standing.

A similar issue arose in CROA Case #508. The issue there was whether the grievor was entitled to a payment for time spent in travel from one work location to another. The Company sought to rely on an exception provided in Article 13.1 of the Collective Agreement with the Brotherhood of Maintenance of Way Employees then under consideration. It provided no payment of travel time for employees travelling from one location to another in the exercise of seniority. In that case Arbitrator Weatherill concluded that the grievor's initial move from Toronto to Hillsport was not at the election of the employee, but was forced on him by the terms of the Collective Agreement and the need to fill a temporary assignment. Similarly, the Arbitrator concluded that the employee's return to Toronto was merely a resumption of his regular assignment. Neither move, it was

concluded, amounted to the "exercise of seniority" as that phrase is used in Article 13.1 of that Collective Agreement. The underlying rationale was described by Arbitrator Weatherill in the following terms:

> "...thus where a movement of personnel is forced on the Company because of the Employee's assertion of seniority, necessary travel time is not paid by the Company. The Instant case, it appears that the temporary assignment of the grievor was one required by the Company, so that the limitation contained in Article 13.1 would not apply."

The foregoing interpretation of the phrase "exercise of seniority" is instructive to the issue at hand. As it is normally understood in the labour relations context, the exercise of seniority imports an element of initiative or election on the part of an employee as, for example, in the use of bumping rights, or in the competition for a job posting. In that circumstance seniority can be likened to a sword to be unsheathed and used at the employee's initiative. In other circumstances, seniority may operate as a shield, for example to shelter an employee from a layoff, or to minimize the duration of a layoff by determining a priority of recall. In the latter circumstances while an employee has the benefit of seniority, he or she cannot generally be said to be "exercising seniority rights" as that term is generally understood.

That understanding is reflected in the language of Article 72.3 of the Collective Agreement. The Article distinguishes the separate situation of recall from layoff from the exercise of seniority rights as the cause for an employee's move. Both are identified as exceptions which do not entitle the employee to the payment of the meal allowance. However, it is significant that while recall from layoff is expressly identified, recall from "cut off" is not. It is not within the powers of the Arbitrator to amend the agreement, and in the circumstances I must conclude that the parties did not intend to specifically exclude payment of the meal allowance in the event of a recall from "cut-off". Moreover, for the reasons elaborated, and in keeping with the principles expressed in CROA Case #508, the Arbitrator is satisfied that on their move to Toronto the grievors were not exercising seniority rights within the meaning of Article 72.3 of the Collective Agreement.

For these reasons the grievance must be allowed. It is therefore ordered that the grievors' claims be paid forthwith. The Arbitrator declines to make any order in respect of the payment of interest in the circumstances of this case, as that issue was apparently not raised during the course of the grievance procedure. I remain seized of this matter in the event of any dispute between the parties respecting the quantum of compensation.

MICHEL G. PICHER,
ARBITRATOR.