

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1689

Heard at Montreal, Thursday, September 10, 1987

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

The Company reduced the monthly guarantee payment to Trainmen K. McClelland, L. Johnson and D. Snedden for not protecting work on the Hawk Junction Spareboard.

JOINT STATEMENT OF ISSUE:

The Company reduced the monthly guarantee payment to Trainmen K. McClelland, L. Johnson and D. Snedden for not protecting work on the Hawk Junction Spareboard.

The Organization contends that Trainmen assigned to the Steelton Spareboard do not have to protect work on the Hawk Junction Spareboard which is a different assignment.

The assignments are bulletined separately, i.e. Steelton Spareboard - for work on the Soo Subdivision with home terminal at Steelton and the Hawk Junction Spareboard - for work on the Northern and Michipicoten Subdivisions with home terminal at Hawk Junction.

The Organization further contends that Trainmen McClelland, Johnson and Snedden protected the Steelton Spareboard on the dates in question and should be compensated.

The Company contends that Trainmen McClelland, Johnson and Snedden refused the calls to work on November 18, and November 22, 1986 and declined payment of the claims as presented in accordance with Article 73.

FOR THE UNION;

(SGD.) J. SANDIE
General Chairman

FOR THE COMPANY:

(SGD.) L.E. HUPKA
FOR: Vice President, Rail

There appeared on behalf of the Company:

V.E. Hupka - Manager, Industrial Relations, Sault Ste.
 Marie, Ont
N.L. Mills - Superintendent - Transportaion, Sault Ste.
 Marie, Ont.

And on behalf of the Union:

J. Sandie - General Chairman, Sault Ste. Marie, Ont.

AWARD OF THE ARBITRATOR

The issue is whether the Company is entitled to require employees holding bulletined positions on the Steelton Spareboard to accept a temporary assignment on the Hawk Junction Spareboard. The Union maintains that such arrangements have always been filled on a voluntary basis by employees. The Company's position is that when it has exhausted its manpower resources at Hawk Junction, including the Spareboard, all employees on the active list and laid off employees, it is entitled to turn to the Steelton Spareboard to protect the work in question. In this regard it relies in part on a letter of understanding between the parties dated September 5, 1974 which provides as follows:

This will confirm understanding reached at our meeting on June 21, 1974 with respect to payment of away-from-home expenses (Meal Allowance) to Trainmen.

(a) Except as provided in Paragraph (c) hereof, an employee who is required by the Company to move from a main (home) terminal to another main (home) terminal where a shortage of men exists, will be allowed \$6.00 per day for meals where such are not provided by the Company or at Company expense.

(b) The allowance will be paid for each calendar day such employee works or is available for work at or out of the point where the shortage exists provided such point is not his normal place of residence.

(c) This allowance does not apply to an employee moving in exercise of seniority rights.

The Union submits that the foregoing provision does not address the circumstances at hand. Its representative argues that the provision for an allowance for the movement from one home terminal to another was not intended to describe the rights of the Company or the obligations of the employees in respect of bulletined spareboard positions.

A broad scrutiny of the Collective Agreement lends some credence to the Union's position. Article 63 of the Collective Agreement makes provision for the employment of laid-off trainmen, and a letter of understanding between the parties dated May 8, 1970 specifically

establishes a "slowboard" whereby a laid-off employee may signify his interest in working when a temporary opening occurs. The Company does not dispute that it does canvas laid-off employees to protect temporary positions although, by its account, it does not always have great success in finding a positive response, frequently because of the U.I.C. status of laid-off personnel.

On the whole the Arbitrator cannot agree with the Union's contention that the Company can never "force" a spareboard employee at one location to protect work on a spareboard at another location. In the Arbitrator's view the Collective Agreement cannot contemplate that the Company could ultimately be left without sufficient employees, forcing it to cancel trains.

An overall examination of the scheme of the Collective Agreement, however, suggests that the Union is partially correct in this case. It is common ground that when the Company ordered the three grievors to protect work on the Hawk Junction Spareboard, while the Company had fully canvassed its available manpower at Hawk Junction, it had not done so with respect to all available staff at the Steelton location. As noted above, the Collective Agreement specifically contemplates the possibility of laid-off employees covering temporary assignments. On balance, I am satisfied that to be consistent with the Collective Agreement, prior to ordering the grievors to Hawk Junction the Company was obligated to first canvass all employees on its active list, as well as laid-off employees working out of the Steelton terminal. Only once that effort failed to produce a willing body, could it require a spareboard employee at Steelton to protect the Hawk Junction spareboard. In the circumstances, therefore, the Company did not comply with the Collective Agreement, and the grievance must be allowed.

For the foregoing reasons, the claims of Trainmen McClellan, Johnson and Snedden must succeed, and they shall be compensated accordingly. I retain jurisdiction in the event of any dispute respecting the interpretation or implementation of this award

MICHEL G. PICHER
ARBITRATOR