CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1820

Heard at Montreal, Tuesday, 13 September 1988

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of Article IX.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company is violating the terms of Article IX in refusing to pay held time to a spareboard employee.

The Company maintains that spareboard employees can be assigned to any service and, by the terms of Article 34.05b of the Collective Agreement and are paid according to the position which they fill; consequently Article IX has not been violated.

FOR THE UNION:	FOR THE COMPANY:
(SGD) B. ARSENAULT	(SGD) A. BELLIVEAU
GENERAL CHAIRPERSON	MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	- Counsel, Montreal
A. Belliveau	- Director, Human Resources, Sept-Iles
J.Y. Nadeau	- Superintendent, Transportation, Sept-Iles
K. Turiff	- Superintendent, Maintenance of Equipment, Sept-Iles
P. Caouette	- Counsel (Observer), Montreal

And on behalf of the Union:

R. Cleary	- Counsel, Montreal
B. Arsenault	- General Chairperson, Sept-Iles

AWARD OF THE ARBITRATOR

A question arises concerning the interpretation of Article IX of the Collective Agreement which reads as follows:

HELD AWAY FROM HOME TERMINAL

90.1A) Employees in pool and in unassigned service held at other than home terminal, who book not more than six (6) hours rest, will be paid on the minute basis at the rate paid in last service performed for all such time held over ten (10) hours following the time off duty.

90.1b) Employees in pool and in unassigned service held at other than home terminal, who book rest for seven (7) hours, eight (8) hours or nine (9) hours will be paid on the minute basis at the rate paid in last service performed for all such time held over eleven (11) hours, twelve (12) hours or thirteen (13) hours respectively whichever is the case, following the time off duty.

The Union claims that an employee taken from the spareboard who is assigned to a service where he or she is replacing an employee in assigned service is at all times, for the purposes of Article IX, an employee who is not in assigned service and has, therefore, the right to the rate applicable in the circumstances set out in the article.

The article does not support this interpretation. It seems clear to the Arbitrator that the term "in assigned service" is intended to apply to an assignment associated with a train. This is evident in light of the fact that further in the same article the employees are paid "at the rate paid in last service performed ...". On the whole, assigned service can be said to be an assignment to one job or another. In the same sense, for example, Article 6.04(a) refers to a crew to which an employee is "regularly assigned ...". Article 6.06 reads, in part, "... unassigned employees, when call will be notified of the service and the direction for which they are required. ..."

The Arbitrator must conclude that the intention of the agreement is that an unassigned employee who is not called to work remains, during this period of inactivity, an employee without assignment. The employee is not at that moment an employee assigned to a service in the sense of Article IX. It is thus impossible to conclude that an unassigned employee, assigned to a specific service, remains at all times an employee who is not assigned to a specific service for the purposes of the article.

This conclusion is, moreover, sustained if one considers its practical application. For what reasons would the parties have agreed that a relief employee would be better paid than an employee which he or she had been called to relieve? A conclusion to this effect would have to be based on a clear and precise article. It could not be reached by a convoluted interpretation which would appear to have no basis in the long and opposite practice which has been well accepted by the two parties.

For these reasons the grievance must be dismissed.

September 16, 1988 (Sgd.) MICHEL G. PICHER
ARBITRATOR