

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1990

Heard at Montreal, Tuesday, 9 January 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of the Organization for fifty (50) miles at Yard Rates in favour of Trainman P. Rivard when not called as Yard Foreman for spare yard shift on November 24, 1988.

JOINT STATEMENT OF ISSUE:

Trainman P. Nadjiwon was assigned to the 1600 to 2400 hour Steelton Yard as Yard Foreman. He was scheduled vacation from November 5 to 25, 1988 and Trainman Baxter was awarded the Yard Foreman's position. Subsequently, Yard Foreman Baxter commenced an approved four working day leave of absence on November 18, 1988 (leave 19/20/23/24) (days off 21/22). Trainman P. Rivard as the senior Yard Helper was assigned by the Company to the 1600 to 2400 Steelton Yard to cover the Baxter vacancy.

The Organization contends the Mr. Rivard, as senior Yard Helper on the 1600 to 2400 yard assignment, should have been called for a spare yard vacancy as Yard Foreman commencing at 1000 November 24, 1988 and not held back to protect the Yard Foreman vacancy in the 1600 to 2400 Yard.

The Company contends that Mr. Rivard as the senior qualified man working as a Yard Helper on the same shift in the particular yard succeeded to the position of Yard Foreman in the 1600 to 2400 yard assignment as of November 19, 1988 by the terms of Article 106a and as such was not in a position to be called for the spare yard shift in question.

The Organization's position is that Yard Helper Rivard was runaround and is claiming payment of Yard Foreman as per Article 30.

The Company does not concur with the Organization's contention and has declined payment accordingly.

FOR THE UNION:

(SGD) J. SANDIE  
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) V. E. HUPKA  
for: VICE-PRESIDENT - RAIL

There appeared on behalf of the Company:

V. E. Hupka - Manager, Industrial Relations, Sault Ste. Marie  
N. L. Mills - Superintendent, Transportation, Sault Ste. Marie  
J. N. Gardner - Labour Relations Officer, Sault Ste. Marie

And on behalf of the Union:

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

#### AWARD OF THE ARBITRATOR

It is common ground that the 1600-2400 hours tour of duty at Steelton is a regular yard assignment. On November 24, 1988 the Company established a spare yard shift commencing at 1000 hours.

Article 106(a) of the Collective Agreement is the provision pertinent to the resolution of this grievance:

106(a) Temporary vacancies and temporary assignments of four (4) working days or less for yard helpers will be manned by qualified men from the joint spare board first-in, first-out. Such vacancies for yard foreman will be filled by the senior qualified man working as a yard helper on the same shift in the particular yard; if there is no qualified man working as a yard helper in such yard, the senior available man not assigned as a yard foreman in the terminal will be used.

On the basis of the material before me I am satisfied that the foregoing provision permits the Company to assign a yard helper to a temporary vacancy lasting up to and including four working days. That is what occurred in the case of Trainman Rivard. He replaced Yard Foreman Baxter for a four day period after November 18, 1988. On that basis I am satisfied that he was properly assigned as a yard foreman on November 19, 20, 23 and 24 of 1988. Consequently, when the spare yard shift commencing at 1000 hours fell to be assigned, Mr. Rivard was not "the senior qualified man working as a yard helper" within the meaning of Article 106(a) of the Collective Agreement.

Nor am I persuaded that the terms of the Memorandum of Agreement between the parties dated May 4, 1964 concerning the application of Article 106(a) for spare yard shifts in Steelton Yard has any application in the instant case. Paragraph 2 of that memorandum provides that the yard foreman's job on the spare shift is to be assigned to "the senior qualified man assigned to work as a yard helper on that day". For the reasons touched on above, I am satisfied that the grievor was already properly assigned as a yard foreman, and not as a yard helper, on November 24, 1988. Lastly, I am not satisfied that the language of Article 86, which governs the payment of overtime, and in particular the note appended to that provision, would support the Union's claim.

For the foregoing reasons the grievance must be dismissed.

January 12, 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR