

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1991

Heard at Montreal, Wednesday, 10 January 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for spare yard shift at premium rate by Trainmen J. Bailey and M. Rivard when not called to fill out yard crew on July 19, and July 28, 1988 respectively.

JOINT STATEMENT OF ISSUE:

Yard Helper J. Bailey was working the 1000 - 1800 yard shift on July 19, 1988. The yard shift identified in the grievance worked 1500 - 2300 hours on July 19, 1988. Yard Foreman M. Rivard was working the 1500 - 2300 yard shift on July 28, 1988. The yard shift identified in the grievance worked 2130 - 0530 on July 28, 1988.

The Union believes that by Article 70(b) that after 2 hours and men are available that they should be called before working a spare yard with only 2 men for eight hours. The Company has paid identical claims such as in letter of November 28, 1988 from Mr. Black.

The Company contends that Article 70(b) provides for working a reduced yard crew if trainmen are not available, within the first two hours, to fill out the crew consist. Trainmen, including Messrs. Rivard and Bailey, were not available at call time to respond to the normal 2-hour call.

The Brotherhood requests payment of 150 miles at Yard Rates for both Trainmen Bailey and Rivard as per Article 70(b).

The Company disagrees with the Union's contention.

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

The grievance turns on the interpretation of Article 70(b) of the Collective Agreement which provides as follows:

70(b) Yard crews will have a conductor and two brakemen and will not be required to work short-handed, when men are available, longer than two (2) hours, and if no men are available, they will not be required to work longer than one day or eight (8) hours.

It is not disputed that in the instant case the regular tours of duty of grievors Bailey and Rivard overlapped the spare yard shifts for which they claim they should have been called. In other words, their own regular tours of duty extended well beyond the commencement of the spare yard shifts.

The word "available" appearing within Article 70(b) must be interpreted within its context. In the instant case it is not disputed that the grievors would have been entitled to a reasonable meal break period following their regular tour of duty and would, effectively, not have been available but for little more than half of the spare yard shifts in question. While it is unnecessary to exhaustively define the meaning of the term "available" for the purposes of this grievance, it appears to the Arbitrator that when the spare shifts are viewed as a whole it cannot be said in any meaningful way that either of the grievors was available to work them. While it may have been within the prerogative of the employer to offer them a partial shift on an overtime basis, I cannot, in these circumstances, find that it was obliged to do so by the terms of Article 70(b) of the Collective Agreement.

For the foregoing reasons the grievances must be dismissed.

January 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR