CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2332
Heard at Montreal, Tuesday, 9 March 1993
concerning
ALGOMA CENTRAL RAILWAY
and
UNITED TRANSPORTATION UNION
EX PARTE
DISPUTE:
Appeal of discipline assessed Conductor J. Skouris, Hawk Junction, 24 July 1992.
UNION'S STATEMENT OF ISSUE:
Conductor John Skouris was assessed twenty (20) demerit marks for "refusing to report for duty on July 24, 1992." This demerit assessment was subsequently reduced to ten (10) demerit marks.
The Union contends that the assessment of demerits is unwarranted in the circumstances of this case.
The Union contends that Conductor Skouris is entitled to exercise his right to refuse unsafe work.
The Union further contends that the investigation conducted in this manner was unfair and not conducted in compliance with the Agreement.
The Company declines the Union's appeal.
FOR THE UNION:
(SGD.) J. H. SANDIE
GENERAL CHAIRMAN
There appeared on behalf of the Company:
J. D. Gardner
Labour Relations Officer, Sault Ste. Marie
L. Bertolo
Assistant to Manager, Rail Services, Sault Ste. Marie
Greg Lowe
Trainmaster, Sault Ste. Marie
And on behalf of the Union:
G. Watts
Counsel, Toronto
J. Sandie
General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that Conductor Skouris declined to report for work because, by his own account, he was invoking article 80 of the collective agreement. Article 80 provides, in part, as follows:

QQINDENT 80 QQINDENT Experience of Brakemen of Baggagemen

QQINDENT (a) QQINDENT One brakeman or baggageman on each train must have had at least six (6) months' experience, and the same or another man be acquainted with the run. A conductor will not be required to take out an alleged incompetent brakeman unless the alleged incompetency is disproved. Conductors finding brakemen or baggagemen incompetent must make complaint in writing.

Conductor Skouris refused to work with Trainman B. Alcock. Trainman Alcock was hired on July 6, 1992. It is common ground that he had five years' experience as a trainman, previously in the employment of the Canadian Pacific Railway. The material further discloses that prior to July 24, 1992, Trainman Alcock had completed no less than five trips, either as a working member of a crew, or on a familiarization assignment, over the territory assigned to Conductor Skouris on the 24th.

In the circumstances, the Arbitrator cannot sustain the position of the Union. Even accepting the Union's interpretation, whereby the phrase "another man" in article 80 must be taken to be another brakeman or baggageman, a point upon whose merit I do not comment, Mr. Alcock would have satisfied the requirement of another man "acquainted with the run" within the meaning of the article. It is not disputed that in the practice of at least another major railway three familiarization runs are sufficient to satisfy the requirement of sufficient acquaintance for the purposes of assignment. I can see no reason to conclude that Mr. Alcock, with five trips over the road, both working and for familiarization, did not satisfy the requirement of article 80. There is, moreover, no indication in the evidence before me that Conductor Skouris made any indication to the Company, at the time that he refused to report, that safety was a consideration. This was not raised until several days later. In the circumstances I am of the view that the grievor acted out of a concern for the application article 80, and not out of reasonable fear for his own safety. For the reasons related above, no violation of article 80 is disclosed.

For the foregoing reasons the grievance must be dismissed.

March 12, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR