CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2459
Heard in Montreal, Wednesday, 9 March 1994
concerning
ONTARIO NORTHLAND RAILWAY
and
United Transportation Union
DISPUTE:

A claim for two days' pay at the operator's rate of pay for Motor Coach Operator James Aultman.

JOINT STATEMENT OF ISSUE:

Motor Coach Operator J. Aultman was working on a temporary vacancy, Crew 44 Driver 1. On December 31, 1992 Mr. Iserhoff returned to work which resulted in Mr. J. Aultman being displaced. Mr. Aultman, when displaced, returned to his former assignment, Crew 41. As a result Mr. Aultman was short two days' pay.

The Union contends that Mr. Aultman was entitled to two days' pay in accordance with Article 6.1. Also, the Company was entitled to notify Mr. Aultman he was short two days' pay, as was the practice in the past, and allow him to make up the two days' pay, 400 and 404 km.

The Company denies violation of Rule 6.1 and refuses to pay the claim.

FOR THE UNION : FOR THE COMPANY:
(SGD.) K. L. Marshall (SGD.) K. J. Wallace
General Chairman President

There appeared on behalf of the Company:
M. J. Restoule - Manager, Labour Relations, North Bay
T. McCarthy - Labour Relations Officer, North Bay
J. G. Kuiack- Director, Bus Services, North Bay
And on behalf of the Union :
K. L. Marshall - General Chairman, North Bay
W. Ross- Local Chairman, North Bay

AWARD OF THE ARBITRATOR

The grievance turns on the application of article 6.1 of the collective agreement, which provides as follows:

> 6.1 Employees regularly assigned as Motor Coach Operators who are ready for duty the entire month and who do not lay off of their own accord will be guaranteed ten days' pay (at operator's rate) and four assigned rest days in each 14 day period.

As reflected in the joint statement, Mr. Aultman was working a temporary vacancy, covering a regularly assigned position during the temporary absence of the employee who held it, prior to being returned to his own regular assignment on Crew 41. It is common ground that Mr. Aultman is a regularly assigned employee within the meaning of article 6.1 when working his regular assignment, and that the temporary vacancy which he occupied was in replacement of a regularly assigned operator.

The Company submits that the provisions of article 6.1 do not apply in the case at hand, because Mr. Aultman occupied a temporary vacancy, and not a regular assignment. The Arbitrator has some difficulty with that submission. The collective agreement conceives of three kinds of operators: regularly assigned operators (article 6), operators/labourers (article 1.3)

and spare operators (article 9). In the Arbitrator's view the fairest characterization of the facts is that Mr. Aultman was at all times a regularly assigned operator, notwithstanding that he filled a temporary vacancy in the position of another regularly assigned operator.

There is nothing in the circumstances which would, in my view, take Mr. Aultman out of the purview of article 6.1 of the collective agreement. When he was required to return to his own regularly assigned position, and lost two days' work, he would, according to the plain language of the article, be entitled to the protection of the guarantee. Nor is it clear that the Company was without the ability to protect itself. The collective agreement contemplates that employees who decline the offer to perform alternative work are disentitled to the guarantee, to the extent that they lay off of their own accord. It appears that for that reason the Company's practice has been to advise employees of the reduction of their work days and to offer them alternative work. That circumstance did not arise, however, in the case of Mr. Aultman as he was not offered other work.

In allowing the grievance, the Arbitrator also rejects the submission of the Company in reliance on CROA 186. As the Union's representative points out, the language of article 94 of the collective agreement which applied in that award expressly provided a guarantee for "Regularly assigned yardmen on permanent assignments ...". While under the collective agreement considered in CROA 186 it may be that an employee on an temporary assignment could not invoke the protections of the guarantee, the language of article 6.1 of the instant collective agreement would not sustain such a conclusion. There is no reference as to whether the regularly assigned employee who is the subject of article 6.1 must work in a permanent or a temporary position to invoke the protections of the article. For the reasons related, I am satisfied that he or she need only be a regularly assigned operator and perform the work of a regularly assigned position.

In the result, the grievance must be allowed. The Arbitrator finds and declares that the Company violated the collective agreement by denying Mr. Aultman two days' pay for 400 km and 404 km., respectively as the result of his moving from one regular assignment to another. The Company is directed to compensate the grievor accordingly for all wages and benefits lost.

11 March 1994 (sgd.) MICHEL G. PICHER
ARBITRATOR