

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3239

Heard in Montreal, Thursday, 10 January 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

Loss of earnings for S.A. Vassallo account improper application of seven-day pulls pursuant to article 107 of agreement 4.3.

COUNCIL'S STATEMENT OF ISSUE:

Sam Vassallo of Prince George, British Columbia occupied the furlough board on Friday, June 4, 1999. Mr. Vassallo was scheduled to commence annual vacation following board change that day. At 13:08 PDT, seven minutes after board change, Mr. Vassallo was placed on annual vacation retroactively effective 04:00 PDT.

This penalized Mr. Vassallo one day's furlough board pay even though he had been available the preponderance of the day.

Upon Mr. Vassallo's return from annual vacation he was shown available at 04:00 PDT. Unfortunately, the Company failed to provide him a turn on the working board as required by the agreement and Mr. Vassallo was again deprived of earnings.

The union requests that Sam Vassallo be fully compensated and made whole for his losses.

The Company declines this request.

FOR THE COUNCIL:

(SGD.) R. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

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| D. Coughlin | – Consultant, Montreal |
| R. Reny | – Human Resources Associate. Vancouver |
| D. Erickson | – Assistant Manger, CMC, Edmonton |

And on behalf of the Council:

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|----------------|--------------------------------------|
| R. Hackl | – Vice-General Chairperson, Edmonton |
| B. R. Boechler | – Vice-General Chairperson, Edmonton |
| B. J. Henry | – General Chairperson, Edmonton |
| W. McClelland | – Local Chairperson, Prince George |

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator has some difficulty with the Council's claim. Firstly, it relies in part on the application of article 107.33 of the collective agreement which reads as follows:

107.33 Employees scheduled for vacation who may be subject to commence a tour of duty that will not be completed prior to the board adjustment time may work that tour of duty, unless they voluntarily advise the Crew Management Centre to pull their turn prior to the commencement of that tour of duty. If an employee commences such tour of duty prior to board adjustment time, their vacation will commence on the day following the date of commencement of the return tour of duty.

The Council submits that the placement of the grievor on the furlough board for a partial day qualifies as the commencement of a tour of duty for the purposes of the foregoing provision. The Arbitrator is more persuaded by the interpretation of the Company. While standing on a furlough board may merit compensation, and place a person in a position of availability to take an assignment of duty, it does not in the Arbitrator's view constitute a "tour of duty", nor can it be said that an individual may "work that tour of duty" in the sense contemplated by article 107.33.

Further, if the position of the Council is accepted, the grievor would effectively receive double payment for the same period of time, receiving both vacation pay and furlough board pay for the same date. In the Arbitrator's view that is not contemplated by the provisions which are here in dispute.

Upon a review of the terms of the collective agreement the Arbitrator is satisfied that the grievor was not improperly deprived of one day's furlough board pay in the circumstances disclosed, nor was he the subject of any violation of article 107 of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

January 16, 2002

(signed) MICHEL G. PICHER
ARBITRATOR