

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 28

Heard at Montreal, Monday, March 21st, 1966

Concerning

**ALGOMA CENTRAL RAILWAY**

and

**BROTHERHOOD OF RAILROAD TRAINMEN**

### DISPUTE:

Assessment of discipline to Yardman R. Matthews account not available for duty when called, November 14th and 15th, 1964.

### JOINT STATEMENT OF ISSUE:

Yardman R. Matthews, assigned as yard helper on regular shift working from 7:00 a.m. to 3:00 p.m. Monday through Friday, days off Saturday and Sunday, exercised his prerogative as covered in schedule article 87, clause I of the agreement. At completion of regular shift at 3:00 p.m. Friday, November 13th, 1964, he signified in writing that he would be available able for call on his assigned rest days, Saturday and Sunday, November 14th and 15th.

On both days he was called for duty and on neither day was he available for service, as a result of which disciplinary action was taken.

The Brotherhood contends that the assessment of discipline was not justified.

### **FOR THE EMPLOYEES:**

**(SGD.) C. E. MCCLELLAND**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) J. A. THOMPSON**  
**VICE-PRESIDENT – RAIL OPERATIONS**

There appeared on behalf of the Company:

H. R. Wootton – Manager Rail Operations, Sault Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland – General Chairman, Sault Ste. Marie

### AWARD OF THE ARBITRATOR

The facts disclosed that a spare yard shift was required at Steelton on Saturday, November 14, 1964, commencing at 5:00 p.m. and again on Sunday, November 15, 1964, commencing at 5:00 p.m.

To fill the yard foreman vacancies in each case, the Yardmaster applied the provisions of article 106(a) and thereafter the provisions of article 87(i), as provided in a memorandum of agreement dated May 15, 1964.

As indicated in the Joint Statement of Issue, Yardman R. Matthews, assigned as a yard helper on regular shift, exercised his prerogative as covered in schedule article 87, clause (I) of the agreement, indicating that he would be available for call on his assigned rest days, Saturday and Sunday.

On November 14, 1964, his first day off, he left home at 6:00 p.m. and was back home by 6.30 p.m. He was informed that he had been called for work while away. He telephoned the yard office and was told he was too late, another trainman had been called.

On the following day, his second day off, he telephoned the yard office shortly before noon and was told there was nothing doing. He went out after dinner, later he was told that he was called for a spare yard at 3:00 p.m. and was not available.

On November 26, 1964, he was assessed 5 demerit marks for being unavailable for work on November 14, a first offence, and also 10 demerit marks for being unavailable for work on November 15, his second offence.

It was claimed for the grievor by Mr. McClelland that the practice that should prevail in this instance is that provided for in article 73 of the agreement as to spare trainman missing a call. When this occurs the only penalty imposed is that he is dropped to the bottom of the spare board.

Mr. McClelland stressed that under article 87, a regular yardman booking for spare work is only used after there are no spare board trainmen available and so under normal conditions would not be used. When he is required, it is only logical that he be notified that he will be needed as soon as it is known and not wait until it is time for the regular call.

During the discussions held in this matter prior to proceeding to arbitration it was the Company's contention that article 73 had no application. It was agreed, however, that the total penalty could be 5 demerit marks, providing the Brotherhood agreed that article 73 had no application.

In his argument Mr. Wootton pointed to the fact that article 73 deals specifically with trainmen on the spare board. He claimed the grievor was not on the spare board, but rather a regularly assigned employee who had placed himself available for spare work on his assigned rest days, in accordance with article 87 (i). It reads:

- (i) Except as provided in article 106, in the event that spare board becomes exhausted, and it is necessary to call a regularly assigned Yardmen on one or both assigned rest days, the senior available man will be called, provided he has advised the yardmaster or his supervisor in writing on completion of his work week that he will be available for call, and that such work will not interfere with his regular assignment

Desirable though the system provided in article 73 may appear to the Brotherhood for application in the case of those assigned under article 87 (i), as provided for in the Memorandum of Agreement dated May 15, 1964, I am satisfied article 87 (i) is a special provision that must prevail, designed as it was to deal not with those operating on the spare board but who come into availability under the specific formula there provided.

Mr. Wootton stressed the difficulty encountered by the Company in those designating themselves as being available not responding to a call.

For the Company it was explained that the decision to reduce the total penalty by cancellation of the 5 demerit marks, was because an additional penalty was believed justified in view of the hoped-for deterrent effect of the first. In this instance, the occurrences being on succeeding days, this opportunity for education had not been made available to the employee.

The Arbitrator would like to stress that care must be taken in assessing penalties for an offence of this kind. Although a man has indicated his willingness to respond to a call, this surely cannot be taken as meaning that he should bind himself to a telephone for the entire time on his day off. There must be a reasonable application of the notice and the response. Apart from the reason given for this reduction in connection with the first incident, I would

not have upheld a penalty imposed when a call had been made and response given within a short period. This, in my opinion, is not reasonable.

As to the second offence, however, because the employee had left home, having placed himself on the available list, he should have left word where he could be contacted. In a letter from Mr. McClelland to the Assistant General Manager, while the Brotherhood was acting on this employee's behalf, he stated:

We agree that a trainman that is not available for duty and the investigation proves that he just left without any attempt on his part to protect his work is subject to discipline.

It is my finding there should be placed upon the record of this employee five demerit marks for his failure to respond when called on Sunday, November 15, 1964.

Dated at Brampton, Ontario, this 27th day of March, 1966

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**