

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 57

Heard at Montreal, Monday, March 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Trainman B.K. MacRae, Vancouver, B.C., for 100 miles at way freight rate, September 29, 1965.

JOINT STATEMENT OF ISSUE:

On September 29, 1965, Trainman J.J. Halicki, who was fourth out on the spare board at Vancouver, B.C., was called and used to fill a vacancy in way freight service. Trainman B.K. MacRae, who stood third out on the spare board at the time, submitted a claim under Article 5, Rule 26, of the Trainmen's Agreement for 100 miles at way freight rate of pay because he was allegedly run-around.

Claims were submitted by Trainmen A.L. Bullock and W.F. Rykyta, who were not first out on the spare board, for a similar occurrence on September 27, 1965.

Payment of the claims was declined by the Company.

FOR THE EMPLOYEES:

(SGD.) H. C. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	- Labour Relations Assistant, Montreal
A. D. Andrew	- Senior Agreements Analyst, Montreal
A. J. DelTorto	- Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

H. C. Walsh	- General Chairman, Winnipeg
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AWARD OF THE ARBITRATOR

There was no dispute that on September 29, 1965, a spare trainman was required to fill a vacancy as brakeman on a way/freight ordered for 0830. At the time, spare trainmen, who worked on a first-in, first-out basis, were on the spare board in the following order:

- (1) McDonald
- (2) Cook
- (3) MacRae
- (4) Halicki

Trainman J.J. Halicki, who was fourth-out, was erroneously used to fill the vacancy as brakeman on the way freight. Trainman E.A. McDonald, who stood first-out and should have been used, submitted a run-around claim for 100 miles, a minimum day's pay, under the provisions of Article 5, Rule 26, of the Trainmen's Collective Agreement. This was paid by the Company.

Trainman B.K. MacRae, who was third-out on the spare board at the time Trainman Halicki was erroneously used on the way freight vacancy, also submitted a run-around claim for 100 miles at way freight rates. This claim was denied.

Article 5, Rule 26 of the Schedule of Rates and Rules for Baggage men flagmen and brakemen, Canadian National Railways, Prairie and Mountain Regions reads in part:

Spare trainmen will be run first-in first-out in their respective classes, and will be paid one hundred (100) miles for each time run-around and will maintain their standing on the spare board.

For the Company it was maintained that this question had been ruled upon in Canadian Railway Office of Arbitration Case No. 3, heard July 5, 1965, in a matter arising under Article 3, Clause (f) of the Conductor's Agreement and Article 3, Clause (f) of the Trainmen's Agreement.

The representative for the Brotherhood claimed this decision had no application because of a difference in the wording in the applicable provision in the two agreements. Further, that a proper interpretation of Article 5, Rule 26, provides for payment of one hundred miles to all trainmen on the spare board who are available for service and who are run-around by a spare man who stands for work behind them on the spare board.

Article 3, Clause (f) reads:

Conductors/trainmen in chain gang regularly set up will be run first in first out of terminal points on their respective sections.

All such conductors/trainmen ready for duty so run-around will be paid one hundred miles each run-around, retaining their original standing on train board.

The Company's representative maintained the only difference in the two provisions was that in Article 3, Clause (f) men entitled to work in their turn, as a crew, while Article 5, Rule 26, applies to men entitled to work, in their turn, as individuals.

Both provisions state that trainmen "will be run first-in first-out"; that trainmen who are first-out who are run-around "will be paid 100 miles for each run-around". In both instances trainmen, though paid a run-around, retain their standing on the board.

In this matter it was claimed for the Company that Trainman McDonald should have been called for work as a brakeman on the way freight vacancy on September 29, 1965. He alone was the man first-out on the spare board whose right to work in his turn was violated when the work in question was given to another man. It was urged by the Company representative that Trainman MacRae did not stand first-out and was therefore not entitled to the vacancy.

In **Case No. 3** it was held:

It is also a cardinal rule of interpretation that no instrument should be construed in a manner that would bring about an absurd result. A decision of the Supreme Court of Canada, **Coffin vs. Gillies** (1915) 51 S.C.R. 539, is authority for the proposition that:

In construing a contract the grammatical and ordinary sense of the words should be adhered to, unless that would lead to some absurdity, or inconsistency with the rest of the instrument, in which case the ordinary sense of the words may be modified to avoid such inconsistency.

Applying that principle to the wording in Article 5, Rule 26, "... Spare trainmen will be run first-in first-out ..." in my opinion it would bring about an absurd result, if more employees than the immediate employee required were recognized as having been overlooked and therefore entitled to compensation under that Rule. In this case two trainmen were not required, only one. The wrong one was picked and that was corrected by payment to the one who should have gone.

To interpret this provision otherwise would not be reasonable. As a basis for this claim to succeed, language clearly stating that the parties to the agreement intended that when one employee lost out, all who follow in the pattern of availability must be compensated. This, in my opinion, does not appear. Merely stating the lack brings into focus what a negotiating effort would be required to have such a benefit written into the agreement.

For these reasons this claim is not allowed.

(signed) J. A. HANRAHAN
ARBITRATOR

