

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 167

Heard at Montreal, Tuesday, September 9th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Spare Brakemen P.R Jackson and J.L. Vandenberg, Fort Erie, December 11, 1967.

JOINT STATEMENT OF ISSUE:

On December 11, 1967, train crew of Train No. 488 which was bulletined to operate Sarnia to Fort Erie, with Sarnia as the designated home terminal, was operated Sarnia to Niagara Falls.

Brakemen P.R. Jackson and J.L. Vandenberg, who were assigned to the spare board, at Fort Erie, each submitted claim for loss of earnings in the amount of 100 straight time miles and 75 overtime miles at Brakeman's rate of pay on the grounds that the Company violated Article 12, Rule (a) and Article 78, Item (3) of Agreement 4.16.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
Assistant VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. Del Torto	– Labour Relations Assistant, Montreal
J. R. Gilman	– Senior Agreements Analyst, Montreal
C. F. Wilson	– Senior Agreements Analyst, Montreal
D. C. Fraleigh	– Labour Relations Officer, Toronto
D. J. Frauts	– Superintendent, Windsor

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto
F. R. Hayter	– Secretary of Committee, Stratford
F. Oliver	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

Train No. 488 regularly operates from Sarnia to Fort Erie, via the Grimsby Subdivision and Niagara Falls. There is a pool of three crews assigned to the operation of this train; and the same crews operate the return train from Fort Erie to Sarnia, known as Train No. 489. Another train, known as Train No. 486, operates from Sarnia to Niagara Falls, via the Dunnville Subdivision and Fort Erie, and returns as Train No. 487. There is another pool of three crews assigned to the operation of these trains. The assigned home terminal, for both pools of crews, is Sarnia.

On December 11, 1967, certain automobile traffic destined for Buffalo, New York, and normally handled on Train No. 486, was assigned instead to Train No. 488, because of some delay in the availability of the traffic. On this occasion, Train No. 488 was routed from Sarnia to Niagara Falls via the Dunnville Subdivision and Fort Erie (the route followed by Train No. 486), rather than to Fort Erie via the Grimsby Subdivision and Niagara Falls (its

usual route). The reason for this change in route was that the automobile cars were too high to clear the Merritt Street bridge at Merritt on the Grimsby Subdivision.

The union contends that Train No. 488 completed its assignment when it reached Fort Erie, its regular terminal, even though on this occasion it had been ordered to run through to Niagara Falls. It is claimed that the grievors, members of the spare board at Fort Erie, were entitled to be called for the run from Fort Erie to Niagara Falls, since this constituted an extra train.

Article 78 of the collective agreement, so far as it is material is as follows:

Article 78 – Running of Trainmen on Spare Board

Trainmen on the spare board will run first-in first-out, and those who lose their turn by not being available when called will drop to the foot of the spare board. Trainmen on the spare board will be entitled to:

- (1) All relief work consistent with Article 82;
- (2) work as extra men to complete consist of crews; (3) man extra trains where no unassigned freight crews are available ...

This is not a case to which provisions (1) or (2) apply, and the article only provides, as far as this case is concerned, that the members of the spare board would be entitled to be called if the run from Fort Erie to Niagara Falls, in the circumstances of this case, was an extra train, and no unassigned freight crews were available. There was no argument addressed to the question of the status of the crew of Train No. 488 if the union's argument is correct; I therefore make no determination on that point. The issue is, essentially, whether the run from Fort Erie to Niagara Falls constituted, in these circumstances, an "extra train".

Article 12 (a) of the agreement, also relied on by the union, provides as follows:

- 12 (a)** Trainmen in freight service will not be compelled to perform extra service outside of their regular assignment, where unassigned trainmen are available, except to make up monthly guarantee.

No extra claim was made by the crew of Train No. 488, and no complaint seems to have been made by them with respect to the run from Fort Erie to Niagara Falls on the day in question. Of course, as the union points out, the failure of the crew to make such a claim does not mean that such a claim would have been invalid. The grievors in this case could not base their own claims directly on Article 12 (a), but the question does arise whether the run from Fort Erie to Niagara Falls was extra service outside of the regular assignment of the crew of Train No. 488.

Having regard to all of the circumstances of this case, I am unable to conclude that Train No. 488 became an "extra train" when it proceeded on from Fort Erie to Niagara Falls on the day in question. Certainly, I would agree with the union's contention that a particular regular assignment should not be "used anywhere and everywhere and under any circumstances if the Company so desires", nor did the Company in its argument, make such a sweeping claim. On the other hand, if the Union's argument were to succeed, it would seem that Train No. 488 might be regarded as an extra train throughout all that portion of its run on the day in question; this, of course, was not a result which the Union suggested.

The collective agreement does contemplate that certain changes may be made in assigned runs, and there is no provision limiting service on a run strictly to that described in its bulletin. The latter consideration, it may be noted, weighed heavily with the Arbitrator in **Case No. 88**, a case somewhat analogous to the instant case. I note as well the unrefuted statement of the Company that there is no express provision for automatic release of the crew on Train No. 488 at Fort Erie.

In all of the circumstances, I am unable to conclude that the crew of Train No. 488 performed "extra service outside of their regular assignment" on the day in question or that there was an extra train run. The operation was that of Train No. 488, albeit subject to certain temporary changes necessary to accommodate the traffic carried. There was no violation of the collective agreement, and no necessity to use the spare board at Fort Erie in these circumstances.

For the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR