CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 186

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Eleven time claims submitted by Yardmen at Hamilton, Ont., for guarantee payment August 5, 1968.

JOINT STATEMENT OF ISSUE:

The yard assignments in which the eleven claimants were filling temporary vacancies were cancelled by the Company for the day of Monday, August 5, 1968. Each of the eleven Yardmen submitted a claim for that day, for eight hours pay at the pro-rata rate, under the guarantee provisions of Agreement 4.16.

Payment of the claims was declined and the Union alleges that Article 94 was thereby violated by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. E. McLELLAN	(SGD.) K. L. CRUMP
ASSISTANT GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
D. J. Frauts	– Superintendent, Windsor
S. Nicholson	– Assistant Superintendent, Hamilton

And on behalf of the Union:

G. E. McLellan	– Assistant General Chairman, Toronto
C. G. Reid	– Local Chairman, Hamilton
K. Hillgartner	– Local Chairman, Windsor

AWARD OF THE ARBITRATOR

Article 94 of agreement 4.16 provides as follows:

> **94 Guarantees**
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> Regularly assigned yardmen on permanent assignments will be paid not less than five days in any one work week exclusive of overtime. In any one work week in which one or more general holidays occur, the work week guarantee shall be reduced by the number of general holidays occurring in the work week. Extra service may be used to make up the guarantee.
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> Yardmen in regularly assigned service laying off of their own accord or where the permanent assignment is on only for a part of the work week, will receive their full proportion of the work week guarantee. Classed yard foremen filling permanent assignments as yard helpers, who are taken from their assignments to work as yard foremen on a temporary vacancy or temporary assignment will be entitled to the guarantee.
>
> This article does not apply to spare men.

Monday, August 5, 1968, was Civic Holiday, and the assignments which the grievors would otherwise have worked were cancelled. It was not, however, a general holiday under the collective agreement, and the work week guarantee remained at five days. The issue is whether the guarantee was applicable to the grievors.

The question, precisely, is whether the grievors were "regularly assigned yardmen on permanent assignments" within the meaning of article 94. Whatever meaning these words may have, however, it is at least clear that "spare men" are not entitled to the guarantee. Three of the grievors are spare yardmen, and accordingly the grievance insofar as it affects them, must be dismissed.

The union relied in part on a letter dated September 27, 1963, from the company's Toronto area manager to the Assistant General Chairman of the union, in which there was set out the manager's understanding relating to a similar case. It was said that "... regardless of how an employee may take an assignment, temporary or permanent, as long as he is available under the terms of the Agreement, in this case Article 94, he is entitled to be paid accordingly". The plain wording of article 94, of course, makes it a condition of the guarantee that the employee be on a permanent assignment. The area manager's letter does not constitute an amendment of the collective agreement, and the company is not bound by the interpretation he may have put on it. Even where the company has in the past proceeded in an erroneous interpretation of the agreement, it may, in general, revert to a proper course once that becomes apparent, as the arbitrator pointed out in **Case No. 11**.

The union's principle argument, however, was that there are only two types of yardmen, regularly assigned or spare. A regularly assigned yardman might have a "district assignment" or he might have a permanent assignment to a temporary vacancy. Although a general division into regular and spare employees may be appropriate for some purposes, what is necessary in this case is to apply the language of article 94 itself. The wording of that article supports the distinction between regular and spare employees – only regular employees have any rights under it – but it imposes as well the requirement that such employees be "on permanent assignments". As appears from the second paragraph of article 94, the permanent assignment may be for only part of a week.

The "permanent assignment", however, must be distinguished from work on a "temporary vacancy" or "temporary assignment". In the second paragraph of article 94 it is expressly provided that classed yard foremen will, in certain circumstances, be entitled to the guarantee where they work on temporary vacancies or temporary assignments. The inference to be drawn is, that with that exception, the guarantee is not payable to persons working on temporary vacancies or temporary assignments.

The grievors, it is said, were working temporary vacancies on permanent assignments. They had applied successfully, it seems, on bulletined jobs, to relieve regularly assigned yardmen. Article 136 deals with the bulletining and filling of assignments and relates to "permanent vacancies or new assignments". The only criterion for distinguishing permanent from temporary vacancies appears to be expressed in article 131, where it is said that "regular" assignments are those which are on for ninety days or more, whereas "temporary" assignments are those which are on for less than ninety days. It would seem reasonable to conclude that a "regularly assigned yardman on permanent assignment" means a yardman who obtains and fills a permanent vacancy, pursuant to article 136. Since the grievors were filling temporary vacancies, as set out in the joint statement of issue, they did not meet this qualification. The temporary vacancies themselves arose with respect to regular or permanent assignments, but they were temporary vacancies as far as the grievors were concerned. Most of the grievors were regularly assigned yardmen who had permanent assignments of their own, but on the day in question, they were working on temporary vacancies for which they had applied. Had they been forced from their own permanent assignments onto such vacancies, then it is acknowledged they would be entitled to the guarantee. In the circumstances of this case, however, they were not so entitled.

If article 94 were read as the union suggests, then the phrase "on permanent assignment" would simply be descriptive of the phrase "regularly assigned yardmen", and all yardmen, except spare men, would be entitled to the guarantee. On the contrary, the guarantee appears to be a feature of the permanent assignment, and where the employee opts for a temporary assignment, he runs the hazard of its cancellation.

It is my conclusion, therefore, that the grievors, being on temporary assignments, were not entitled to the guarantee under article 94 when these assignments were cancelled

The grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR