CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 212

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Brakeman R.E. Moreau, Capreol, dated September 1 and 2, 1968.

JOINT STATEMENT OF ISSUE:

On September 1, 1968, freight train No. 407, which would normally operate from Capreol at 0240 hours, September 2, was ordered for 2000 hours, and the assigned crew, to which Brakeman R.E. Moreau was assigned, was called therefor.

Brakeman Moreau was not available when several attempts were made to call him for his assignment. A spare brakeman was therefore used in place of Brakeman Moreau and the assigned crew operated on their assignment to Foleyet and return. As a result, Brakeman Moreau submitted time claims for 177 miles and 163 miles at through freight rate of pay, representing miles earned by his assignment on September 1 and 2, 1968 respectively.

The Company declined payment of the claims and the Union alleged that in doing so, the Company violated the second paragraph of Article 53, and the second paragraph of Article 80, Agreement 4.16.

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

There appeared on behalf of the Company:

A. J. Del Torto	– Systems Labour Relations Officer, Montreal
W. D. Connon	– Superintendent Transportation, Capreol
M. DelGreco	– Employee Relations Assistant, Capreol
C. F. Wilson	– Labour Relations Assistant, Montreal
J. E. Garrity	– Trainmaster/Road Foreman, Windsor

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto
V. L. Hayter	– Secretary, General Committee, Stratford

AWARD OF THE ARBITRATOR

Brakeman Moreau was assigned in a pool of seven crews. He was not assigned to operate any specific train on any specific day, and could be called to operate any one of a number of assigned trains. He was subject to call for one of the assigned trains, in turn. It appears that in the normal course Brakeman Moreau would have been called for train No. 303, scheduled to leave Capreol at 0015 on September 2. As it happened, however, train No. 407, which would normally have left Capreol at 0240 on September 2, left some 6 hours and 40 minutes earlier, at 2000 on September 1. Thus it was train No. 407, rather than train No. 303, for which Brakeman Moreau, being first out, was called.

It is not suggested that it was improper to call Brakeman Moreau for train No. 407, and indeed it would seem that had he not been called, he may have been entitled to make a claim on that account. He was not assigned to a particular train, but was in effect assigned to a group of trains, among which crews are called according to their turn. Brakeman Moreau was properly called in turn for train No. 407. It is true that train No. 407 was operating 6 hours

and 40 minutes ahead of schedule, but since Brakeman Moreau could reasonably have expected to be called for train No. 303, the result of what happened was that he himself was called to leave Capreol some 4 hours and 15 minutes ahead of the time when he could reasonably have expected to leave. While he did not have a "regular assignment" on a particular train, he did have a "normal turn" which he could have expected to take. Because of the early operation of train 407, this normal turn came up 4 hours and 15 minutes earlier than expected on September 1, and Brakeman Moreau could not be located in time to take it.

The collective agreement, in article 76(b)(3) contemplates changes in schedules by the Company. Where there is a change of leaving or arrival time of three hours or more, then it is necessary for the run to be bulletined. In this case, however, there does not appear to have been a change of schedule as such, but the case was simply that train No. 407 was running ahead of schedule. In any event, article 76(b)(3) is not relied on by the Union in this case. The Union relies instead on the second paragraph of article 53 and the second paragraph of article 80. The second paragraph of article 53 is as follows:

> Except as otherwise provided in Article 82(b), trainmen assigned to regular runs will not be considered absent from duty after being relieved on arrival at final terminal at the end of day's run until again required for their regular assignment. If their services are required in the interval, they will be notified, and if so notified and not used, will be paid a minimum day, unless cancelled prior to the starting time of their regular assignment if it were being worked on that day, in which event they will be allowed half a day.

The second paragraph of article 80 is as follows:

> Regularly assigned trainmen will, when available for service, make their regular assigned trip or run notwithstanding the trains may be late or running ahead of time except as otherwise provided in this Article.

The other provisions of article 80 do not appear to be material in the instant case.

It is difficult to see how the Union's case is advanced by the above provision. Certainly Brakeman Moreau was, if available, entitled to take out one of the trains on which he was assigned, according to his turn. Article 80 contemplates that a train may be running late or ahead of time. That provision is not really of assistance in the instant case, however, since Brakeman Moreau did not have a "regular assigned trip". His assignment was to take one of a number of trips, according to his turn.

Again, it is also my opinion that article 53 does not help the Union's case. Brakeman Moreau's "regular assignment" was to take a trip in his turn. He was not assigned on a specific run at a specific time. It is not a question of his being "absent from duty", and the provisions relating to minimum payments where an employee is notified and not used clearly do not apply. In the instant case, all that can be said is that Brakeman Moreau was not in fact available for service in accordance with his assignment on September 1. No doubt, as the Union argued, this situation creates a hardship on employees such as the grievor, whose assignment relates to a group of trips rather than to a specific trip. it may also be that the Company's position in this case differs from the position it took in the **Chard case**, a matter decided in 1964 by His Honour Judge Anderson. In that case reference was made to the "accepted starting time limitations" for an assignment, and reference was made to article 80 and article 76(b)(3). The parties are not bound to argue all their cases consistently, and in any event it is the terms of the agreement in issue before me by which I am bound.

In the instant case, the provisions in the collective agreement to which I was referred simply do not provide relief for the employee who, not being available when called, misses the trip he would have taken. For this reason, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR