

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 334

Heard at Montreal, Tuesday, January 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor R.W. Prince, Niagara Falls, May 26–29, 1969.

JOINT STATEMENT OF ISSUE:

On May 26, 27, 28 and 29, 1969 spare Brakeman R.W. Prince, who was the junior brakeman with six months' experience at Niagara Falls, was taken from the temporary vacancy he was filling on Trains 725 and 726 to fill a temporary vacancy on Trains 760 and 761 in order to comply with Article 85 of Agreement 4.16.

In addition to the payment he received for the service performed, Brakeman Prince submitted time claims for a total of 165 miles at the road switcher rate of pay, representing the difference in earnings between what he earned on Trains 760 and 761 and what he would have earned on Trains 725 and 726, had he worked on these trains on the four dates in question.

Payment of these time claims was declined and the Union alleged that in so doing the Company violated Article 12, Rule (b) of Agreement 4.16.

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. DelTorto – System Labour Relations Officer, Montreal
M. A. Matheson – Labour Relations Assistant, Montreal
L. I. Brisbin – Assistant Superintendent, London

And on behalf of the Union:

G. R. Ashman – General Chairman, Toronto
J. B. Meagher – Vice Chairman, General Committee, Belleville
F. R. Oliver – Secretary, General Committee, Toronto
J. Vaughn – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

At the time in question, the grievor was filling a temporary vacancy on Trains 725 and 726. He had obtained this job under the provisions of Article 82, Section 3 (a) which is as follows:

- (a) A temporary vacancy which it is known will exist for seven calendar days or more will be posted for three days at the terminal out of which the vacancy occurs and will, at the expiration of such period, be filled by the senior qualified trainman assigned to such terminal desiring same, unless the vacancy is subsequently desired by a qualified trainman his senior who applies for same the first time he registers on or off duty after the vacancy is posted. The senior qualified trainman desiring the vacancy will, if not available at the time relief is required, have the right to take the vacancy as soon as he is available. The trainman filling such temporary vacancy will, when displaced, return to his regular assignment or may displace any trainman his junior who is filling a temporary vacancy or temporary assignment manned out of the terminal to which regularly assigned, except those filling temporary vacancies or temporary assignments which he could have obtained while filling his regular assignment had he expressed a desire for same, due regard being had to the provisions of Article 64, Rule (a) paragraphs 2 and 3.

The grievor was assigned to the spare board, but having obtained the temporary vacancy, he was entitled to that work until he was displaced in accordance with the provisions of the collective agreement. It does not appear that he was displaced from the assignment to Trains 725 and 726 in accordance with the agreement, he was, however, directed to fill another temporary vacancy on Trains 760 and 761. Because of this, he did not earn as much as he would have earned had he been left to perform the temporary assignment which he was filling pursuant to Article 82, Section 3 (a).

It seems to be agreed that it was proper for the Company to require the grievor to fill the vacancy on Trains 760 and 761. The Joint Statement of Issue is perhaps confusing when it states that the grievor was transferred "in order to comply with Article 85". Article 85 is as follows:

- 85 One brakeman or baggageman on each train must have had at least six (6) months experience, and the same or another man be acquainted with the run. A conductor will not be required to take out an alleged incompetent brakeman unless the alleged incompetency is disproved. Conductors finding brakeman or baggageman incompetent must make complaint in writing.

It is apparent that Article 85 is concerned with the experience of crews, and imposes certain requirements in that respect. It is not concerned however, with the procedure by which those requirements are to be met. In particular it does not provide, for example, that "the Junior brakeman with six months' experience" could be transferred from his assignment in order to permit the Company to comply with Article 85. Certainly it may be necessary for the Company to take a man from one assignment and transfer him to another in order to comply with Article 85, but it does follow that the provisions of the agreement relating to job vacancies are somehow rendered nugatory with respect to the employee so selected. The grievor happened to have the necessary qualifications, and the Company decided to assign him to the work. He had, however, the entitlement to another assignment, albeit a temporary one. The Company took him from the assignment to which he was entitled and directed him to perform other work to suit its convenience, that is, to enable it to carry out its operations in conformity with the collective agreement.

In these circumstances, the grievor seeks payment in accordance with Article 12 (b) of the collective agreement, which provides as follows:

- (b) Except as otherwise provided in Article 82, Section 2, a trainman used on other than his regular assigned run, will be paid at the schedule rate and under the conditions applicable to the service performed, but if as a result of performing such service he is prevented from following his regular assigned run he shall be paid for such service not less than he would have received had he remained on his regular assigned run.

Article 82, Section 2, is not material. The Company resists payment on the basis that the grievor did not have a "regular assigned run" and so was not entitled to the benefit of Article 12. If this is so, then it would seem that the provisions relating to temporary vacancies would be of slight value to employees, since the holder of a temporary

vacancy could be assigned by the Company to any other work, without regard to his entitlement to the temporary vacancy. The purpose of Article 12 is quite clear, and that is to secure to an employee the earnings associated with the job he holds. It does not apply, as the Company properly points out, to all jobs. It does apply generally to “trainmen”, but it clearly contemplates that these are trainmen having “regularly assigned runs”. It is the Company’s position that the grievor did not come in this category. In my view, this position is not well taken. Article 12 does not distinguish between temporary and permanent assignments. The operation of Trains 725 and 726 did indeed constitute a regularly assigned run. It was a run for which the grievor applied and which was pursuant to Article 82, Section 3 (a). Of course he only held that assignment on a temporary basis, but at the material times it was “his”, and his expectation of earnings in respect of it was supported by his entitlement under Article 83. I see no reason to read Article 12 in such a way as to destroy that entitlement.

In my view, this is a case to which Article 12 applies, and the grievance must accordingly be allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR