CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 366

Heard at Montreal, Tuesday, July 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor T.H. Atherton, August 25, 1970.

JOINT STATEMENT OF ISSUE:

On August 25, 1970, freight train No. 474 which normally operated from Capreol at 1215 hours, was ordered for 1030 hours and the Company attempted to contact the assigned crew consisting of Conductor T.H. Atherton and two brakemen to handle the train. The Company was successful in contacting the two brakemen but its several attempts to contact Conductor Atherton and call him for the assignment were unsuccessful. A relief conductor was therefore used in place of Conductor Atherton and this crew operated the assignment Capreol to South Parry and back to Capreol.

Conductor Atherton submitted claims for loss of earnings in the amount of 150 miles at through freight rate of pay and 136 miles at way freight rate of pay representing miles earned by the relief conductor. The Company declined payment of the claims and the Union alleges 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. DelTorto	– System Labour Relations Officer, Montreal
D. C. Fraleigh	– System Labour Relations Officer, Montreal
H. E. Young	– Trainmaster, North Bay

And on behalf of the Union:

G. R. Ashman	– General Chairman, Toronto
F. R. Oliver	– Secretary General Committee, Toronto

AWARD OF THE ARBITRATOR

The second paragraph of Article 53 provides as follows:

> Except as otherwise provided in Article S2, Section 2, trainmen assigned to regular runs will not be considered absent from duty after being relieved on arrival at final terminal at 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 grievor was assigned to a regular run leaving Capreol at 1215 hours. Certainly the Company was entitled to change the starting time of the run, and in such a case it would be obliged to notify the grievor in accordance with the provision quoted above. On the day in question, the Company attempted, unsuccessfully, to do this. In fact, however, the grievor did call at the yard office at 0910 hours, at which time he learned that the train had been called at 0830 for departure at 1030 hours. The Company had by then call a relief conductor in the grievor's place.

It does not appear that an employee on a regularly assigned run is required to remain at home at all times between runs, against the possibility of a notification of a change in departure times. On the other hand, where an employee cannot be reached for purposes of notice, it would be unreasonable to conclude that the Company violated the agreement where notice was not effectuated on this account. The entitlement of regularly assigned trainmen to their runs appears to be clearly established under the second paragraph of Article 80:

> 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.

In view of the possibility of changes in train time, contemplated by the agreement, it cannot be said that Article 80 guarantees to a trainman the income from his run, in a case where there has been a change of train time but where he has himself made it impossible for notice to be received. In the instant case, had the grievor not called at the yard office as he did, but simply reported in the usual way for a 1215 departure without having been available for any earlier call, then different considerations would apply. In this case, however, the grievor, having been away from his home as he was entitled to be, quite properly called at the yard office to enquire as to his train. The grievor was in fact at the yard office an hour and five minutes before the time when he would be required to report for duty with respect to the 1030 departure. In these circumstances, it would appear that he was "available for service" within the meaning of the second paragraph of Article 80, and that he was therefore entitled to make his regular trip, as that section provides. Contrary to the submission made by the Company, I am unable to see in the Joint Statement of Issue any agreement that the grievor was not available for service, and in the circumstances of this particular case, it is my conclusion that he was so available. The circumstances, in my view, are quite different from those dealt with in **Case No. 212**.

For these reasons it must be concluded that in the circumstances the grievor was improperly held back from his regular run, and that he is entitled to compensation for his loss of earnings. The grievance is accordingly allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR