

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 401

Heard at Montreal, Tuesday, March 13th, 1973

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

### DISPUTE:

Claim for payment of sixty-four (64) miles by Conductor O. Proulx and Brakeman T. Rioux, Called and Cancelled at Waco, Wacouna Subdivision.

### JOINT STATEMENT OF ISSUE:

On May 2nd, 1972, Conductor O. Proulx and brakeman T. Rioux were called and cancelled at Waco while on held away. They submitted a time claim which was refused by the Railway stating that held away was in excess of sixty-four (64) miles.

The Union contends that these men should be paid a call and cancelled under Article 8.01 of the Collective Agreement.

The Company's position is that these men were paid correctly.

The Union filed a grievance, the Company rejected the claim.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. J. SIROIS (SGD.) P. L. MORIN

GENERAL CHAIRMAN SUPERINTENDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin - Counsel, Montreal

P. L. Morin - Superintendent, Labour Relations, Sept-Îles

F. LeBlanc - Labour Relations Assistant, Sept-Îles

T. Leger - Labour Relations Assistant, Sept-Îles

W. Adams - Trainmaster, Train Movements, Sept-Îles

R. Deschenes - Chief Crew Dispatcher, Sept-Îles

And on behalf of the Brotherhood:

J. J. Sirois - General Chairman, Sept-Îles

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### AWARD OF THE ARBITRATOR

Article 8.01 of the collective agreement is as follows:

**8.01** Trainmen called for service and afterward cancelled will be paid sixty-four (64) miles at the basic rate, if cancelled in less than four (4) hours and without performing service. If service is performed or if not cancelled in less than four (4) hours, one hundred and twenty-eight (128) miles will be paid. Trainmen called for service and afterward cancelled shall hold his turn.

It is agreed – and it is clear from the Joint Statement of Issue that the grievors were in fact called and cancelled on May 2, 1972. It would appear that they were cancelled in less than four hours and without performing service. Accordingly, their entitlement to payment under 8.01 seems clear.

The Company took the position that the grievors had been paid in respect of the time in question pursuant to Article 10.01 of the Agreement, as "held away from home terminal". That article is as follows:

10.01 Trainmen in pool and in unassigned service held at other than home terminal more than eleven (11) hours shall be paid on the minute basis at the rate earned in last service performed for all such time held, computed from time off duty or the expiration time of any rest booked until the time next ordered for duty or the time of commencing deadhead trip.

It seems that on the day in question the grievors went on duty 5:25 on Extra 137 South and booked off duty at 10:40 hours at Waco, an intermediate terminal. By Article 10.01, they would have been entitled to payment as "held away" from 21:40 that day. They were called and cancelled at 20.25, and would not then have been entitled to payment under Article 10.01. However this may be, there would seem to be no reason why the grievors should not have been paid pursuant to Article 8.01, which is not qualified, and which provides for payment for the fact of being called and cancelled and, within the limits set out in the section, without regard to the length of time during which the employee may have been preparing to take the call.

In the instant case, the only issue which arises is whether the grievors were entitled to payment pursuant to Article 8.01. The propriety or otherwise of any other payment which may have been made to the grievors is not in issue in these proceedings.

For the foregoing reasons, the grievance must be allowed, and payment made to the grievors pursuant to Article 8.01 of the collective agreement.

**(signed) J. F. W. WEATHERILL**

**ARBITRATOR**