

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 431

Heard at Montreal, Tuesday, January 8th , 1974

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

### DISPUTE:

Claim of Brakeman K. Miron for the difference between what he earned in Yard Service and what he would have earned had he been allowed to follow his own job in irregular pool freight service.

### JOINT STATEMENT OF ISSUE:

Mr. K. Miron, a qualified conductor, was working as a Brakeman in irregular pool freight service out of Steelton Terminal.

Due to a shortage of conductors in Steelton Yard, Conductor Miron, he being the junior available conductor in the terminal, was required to relieve the conductor on the 12:01 a.m. to 8:00 a.m. shift in Steelton Yard from July 15 to 25, 1972.

Brakeman Miron submitted a claim for the difference between what he earned in Yard Service and what he would have earned had he followed his own job in irregular pool freight service. The claim was declined by the Company and the Union contends that in refusing to make payment, the Company violated Articles 12(b) and 106 of the Collective Agreement.

### FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. C. WAUGH (SGD.) J. A. THOMPSON

GENERAL CHAIRMAN VICE PRESIDENT AND GENERAL MANAGER

There appeared on behalf of the Company.

P. J. Leishman – Supervisor of Personnel & Labour Relations, Sault Ste. Marie

H. N. Abbott – Superintendent, Sault Ste. Marie

And on behalf of the Brotherhood.

J. C. Waugh – General Chairman, Sault Ste. Marie

### AWARD OF THE ARBITRATOR

Article 12(b) of the collective agreement provides as follows:

**12 (b)** Except as otherwise provided in Article 77 (b) a trainman used on other than his regular assigned run, will be paid at 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.

The effect of that provision would generally be to provide make-up payment to an employee who is deprived of the opportunity to perform his regular work because of assignment to some other job. In my view, the grievor would be entitled to the benefit of Article 12(b) unless it is shown that his case comes within the exception referred to. Article 77(b) is as follows:

**77 (b)** Trainmen liable for service as conductor may be held off their assignment to meet the requirements of the service. When it is necessary to take such action to ensure that such trainmen will be available two (2) hours prior to the time required to report for duty as conductor. Trainmen held off for the above rule and not used on the job held off for, will be allowed the mileage lost on his assignment.

Mr. Miron was, it seems clear, "liable for service as conductor" and was therefore subject to being held off his assignment in certain circumstances. The question is whether it was "necessary" to take such action in this case. The necessity of assigning a conductor to the 12:01 a.m. to 8:00 a shift in Steelton Yard is not in doubt. What is in question is whether it was necessary that the grievor be selected for the assignment. If the grievor was properly held off his regular assignment, then, since he was in fact used on the job he was held off for, he would not be entitled to payment for mileage lost. If he was not properly required under Article 77(b) to take the yard assignment, then his grievance would succeed. That is, essentially, the basis on which the case was presented by the parties.

Article 106 of the collective agreement sets out provisions relating to the filling of temporary vacancies. No men were available, however, to fill the vacancy in question in accordance with that section. Had it been possible to fill the vacancy in that manner, then there would have been no necessity to hold the grievor off his regular assignment and the grievance would succeed. It was not possible to do so, however, and the Company was obliged to look further in order to meet the requirements of the service.

Article 106(g) is as follows.

**106 (g)** Should no applications be received for a temporary vacancy as yard foreman, the junior qualified man on the joint spare board will be assigned. In the event there is no qualified man on the spare board the junior qualified man working as yard helper will be assigned. Should no applications be received for a temporary vacancy as yard helper, the junior man on the joint spare board at the terminal will be assigned.

There were no persons in the categories there referred to, to be assigned to the job in question. Some guidance may be had from considering Article 71 (which deals with the bulletining and filling of runs) and Article 104 (which deals with the bulletining and filling of yard assignments).

Article 71(e)(2) is as follows:

**71 (e) (2)** Should no application be received from a conductor for any run the senior promoted conductor not assigned as such out of the terminal from which the assignment operates will be assigned. If there are no promoted conductors at such terminal not assigned as conductor, the junior available conductor on the system will be assigned, until such time as the junior conductor is available.

And Article 104 (c) is as follows:

**104 (c)** Should no applications be received for an assignment as yard foreman the junior yard foreman working as yard helper at the terminal will be assigned. If there is no promoted yard foreman working as a yard helper at such terminal the junior qualified available conductor working as a brakeman on the system will be assigned, until the junior conductor is available.

In both these situations, which are analogous to the situation with which we are concerned here, resort may be had to the junior conductor on the system. In the instant case, the vacancy which was required to be filled could not be filled by having resort to the procedures first contemplated by the agreement. Accordingly, it would seem that the proper course was to have resort to the junior conductor on the system. That was Mr. Miron, at the time in question. Accordingly he was properly held off his assignment in order to meet the requirements of the service. The situation is covered by Article 77(b) and is thus within the exception to Article 12 (b).

Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR