

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 483

Heard at Montreal, Tuesday, December 10, 1974

Concerning

NORTHERN ALBERTA RAILWAYS COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal for removal of discipline assessed Locomotive Engineer P.W. Dickinson for refusing a call March 16, 1974.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Dickinson was working in unassigned pool freight service. He arrived Dunvegan Yards at 2315 March 15 and booked 16 hours' rest. His turn was required before his rest had expired and, therefore, spare Engineer Glowinski accepted a call for 1515 March 16 for train No. 31, Engineer Dickinson's normal turn. This exhausted the spare board. Upon expiration of Engineer Dickinson's rest he was advised that he would be required for train #81. He refused to accept the call, claiming he was not subject to duty under Article 37(G) until his turn came back. He was removed from service and, following investigation, was assessed 30 demerits and returned to service on March 29, 1974.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) A. J. SPEARE (SGD.) K. R. PERRY

GENERAL CHAIRMAN GENERAL MANAGER

There appeared on behalf of the Company:

K. R. Perry – General Manager, Edmonton

And on behalf of the Brotherhood.

A. J. Speare – General Chairman, Edmonton

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AWARD OF THE ARBITRATOR

It was quite proper for Engineer Dickinson to book sixteen hours' rest, and that rest period was honoured by the Company. He booked rest at 2315 on March 15, upon his arrival at Dunvegan yard. He was an assigned pool engineer, and was then second in line to be called. At 1315 a call was made, but the engineer first out was out when the call was made, the grievor was on rest, and the third engineman in the pool was off sick. An engineman from the spare board, Engineman Glowinski was therefore called.

Later, after the grievor's rest had expired, he was called as being first in line in the pool (one other had booked rest and the third was off sick). As well, there was no one available on the spare board. One engineman from the spare board, Mr. Glowinski, was out on the run mentioned above while the other, Engineman Myrglad, was out on a two-day tour of duty with a work train. There was one other person who might have been used, a Mr. Ivanson, an engineman trainee.

He had worked two hours' overtime on the 14th of March, booking off at 0200 on the 15th, and had then worked a further tour of duty that day, commencing at 0600. He had not booked rest, but was expected to be called for an 0600 yard assignment on the 17th. In any event, it is clear that it was the grievor who was in line to be called for Train No. 81.

It was contended that the grievor was not really called, because there were no call numbers given. While it might be possible, on a narrow view of things to say that the first call to the grievor was in the nature of an enquiry as to his availability, there can be no doubt that the grievor was subsequently advised in very clear terms that he was being called and was expected to perform his duty. The grievor himself responded in clear terms that he did not accept the call, and would not accept any such call. He based this on his interpretation of Article 37(G) of the collective agreement. It may be noted that, even if the grievor were correct in his interpretation of that article he was still, in the circumstances, under an obligation to accept the call. His rest had been honoured, and any claims which he or others might have as a result of an improper call could be the subject of grievances. In any event, then, the grievor was subject to discipline.

The grievor was wrong in his interpretation of Article 37 (G) That article is as follows.

(3) If an engineer in pool freight service books up to eight (8) hours rest at his home terminal, he will be placed on the board in his turn when his rest is up. In case he is needed before his rest is up, the next through freight man will be used if available. If no through freight man is available, spare man first out will be used, but if he books over eight (8) hours rest, and is required before rest is up, spare man first out will be used, and he will wait his regular turn, except should it be used off his first assigned Subdivision, he will be given a turn twenty-four (24) hours after booking on, or becoming available.

In the instant case, the grievor had booked over eight hours' rest. He was required before his rest was up, but his rest was honoured and, as noted above, the spare man first out (Mr. Glowinski) was used. The grievor then, under Article 37(G)(3) was to "wait his regular turn". When the grievor's rest had expired he was indeed called in turn, in compliance with the requirements of the agreement. The grievor, however, seems to have taken the position that waiting "his regular turn" meant waiting until the train taken by Engineman Glowinski – that is, the train the grievor would have taken had he been subject to call at the time – had returned. That run, the grievor insists, constituted "his regular turn". On this interpretation, the word "turn" may be thought to be synonymous with terms such as "shift", "trick" or "regular run", but it should be clear that that is not the way the word is used in Article 37(G)(3). It is not a question of the regular assignment of particular employees to particular regular runs, but rather one of the assignment, in an equitable order, of runs as they are called. That is clear from the very first sentence of Article 37(G)(3) which provides for an engineer being placed on the board "in his turn" when his rest is up. This would make no sense if it were a matter of regularly assigned runs in the way the grievor seems to suggest. It should be obvious that when Article 37(G)(3) refers to an employee's "turn", it refers to his turn to be called, in the order provided for by the article. If, in this case, the grievor had been passed over and another employee called, then he may well have had a claim in that regard. But there is no merit in his suggestion that he was entitled to wait until whatever engineer had taken out the train he was not called for because of his rest, had returned. In my view, merely to state the proposition is to expose its lack of merit.

The Union's position is that there was a practice established locally whereby an employee who missed a call would not be considered available "until his turn comes in". In that phrase, it is clear that the word "turn" is used in the sense adopted by the grievor. That practice, established in 1958, was for the express purpose of avoiding the sharp practice, apparently engaged in by some employees, of missing a call in order to become available for a passenger run. The practice may have continued even after there were no longer passenger runs on the lines in question, but it is not suggested that such a practice was allowed to operate to the detriment of operations. That in circumstances such as those of this case, an employee may have been allowed to give up a turn and the next person in line would be called. Those circumstances did not apply in this case, and certainly the circumstances which gave rise to the practice did not obtain at all. The practice was designed to put pressure on employees to accept calls in their proper turn, so that they would not, by missing their proper calls, be in line to accept a preferable one. Later, the continuation may have suited the convenience of employees, but no longer served its original purpose and was an anomaly in the face of the provisions of the collective agreement.

In the particular circumstances of this case it is clear that, both under the terms of the collective agreement, and by reason of the clear instructions given him (which, if wrong, could have been grieved), the grievor was under an obligation to accept the call. His blunt and persistent refusal do so made him subject to discipline. There were no representations made as to the extent of the penalty imposed. In my view, the grievor was disciplined for just cause.

The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR