CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 501

Heard at Montreal, Tuesday, April 8th, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim for eight (8) hours at punitive rates of Yard Foreman under the provisions of Article 93, in favour of spare Yardman J. M. Kotlar, Brantford, when not called as Yard Foreman to work with a hoist at 0600 hours, October 5,1973 at Brantford.

JOINT statement OF ISSUE:

On October 5, 1973 a Yard Foreman was needed to work with a hoist ordered for 06:00 hours at Brantford, Ont. Yardman J. M. Kotlar was first out on the Brantford spare board. Instead of calling Yardman Kotlar, a Yard Foreman from the Hamilton spare board was called.

The Company was prepared to pay Yardman Kotlar 4 hours at the straight time rate of pay of Yard Foreman under the provisions of Article 109, on the basis that Yardman Kotlar was run around.

The Union refused the payment on the basis of a run-around and maintained the claim for 8 hours at punitive rates under the provisions of Article 93, claiming loss of earnings.

The claim was declined by the Company.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) G. E. McLELLAN	(SGD.) S. T. COOKE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. E. McLellan – Assistant General Chairman, Toronto
R. G. Arnott – Local Chairman, Hamilton
J. Elliott – Local Chairman, Fort Erie

AWARD OF THE ARBITRATOR

Article 109 of the collective agreement provides as follows:

> **109 Run-around**
>
> A spare yardman standing first out and available for service not called in his turn, will be paid four (4) hours and hold his turn out. This Article does not apply to men on joint spare boards.

This article makes specific provision for the payment to be made to an employee who is "run-around" within the meaning of the article. Whether or not Yardman Kotlar was "run-around" in this sense is the essential issue in this case. It is agreed that the Company erred in calling a Yardman from another location, and that the grievor would be entitled to some compensation. If he was in fact "run-around" within the meaning of Article 109, then his compensation would be that fixed by the article. If he was not "run-around" within the meaning of that article, but was in some other way deprived of the work opportunity to which he was entitled, then it would be my view that he would be entitled to be made whole in respect of that loss, that is, to be paid the amount he would have been paid had he done the work. In that case, it is clear from Article 93 that he would be entitled to payment at premium rates. The Company could not properly be heard to say that he would not be entitled to payment in respect of time not worked, where it was the Company's own action that prevented him from working.

The grievor did in fact stand first out, was available for service, and was not called in his turn. That situation certainly meets the requirements of the first sentence of Article 109. It is clear, however, from the heading of the article, from the second sentence, and from the context of the whole agreement that it deals with a particular type of situation in which an employee loses the work opportunity to which he is entitled: that is, the case where an employee on a list of persons to be called for certain work is, in effect, displaced by someone else on that list. In such a case, while the employee loses his turn to another, the one who gets that turn is nevertheless a person in the same group of employees. The work opportunity is not lost to the group as such. The employee thus passed over is not then entitled to be paid what he would have been paid had he worked, but receives the limited compensation referred to in the article and, it is important to note, retains his place on the list – he holds his turn out.

In the instant case the grievor was not "run-around" in this sense, and the work opportunity was lost entirely to the group of which he was a member. In **Case No. 3** the arbitrator dealt with the claim that all members of the pool board should be considered as having been run around when a crew from another subdivision was called for their work. The case proceeded on the assumption that there was a run-around, and the question at issue was whether only the crew first out was entitled to payment under the provision of that agreement analogous to article 109, or whether, as the Union claimed, all other crews on the list should also be considered as having been run-around, and thus are entitled to the payment. That was the issue with which the arbitrator dealt, he did not have to consider whether there was in fact a "run-around" in the circumstances.

The question did, however, come up in **Case No. 5**. There, the Company sought to apply the "run-around" provision to the case of an employee who was entitled to be called for certain work by reason of his seniority (and other qualifications). While in the broad sense in which the term is sometimes used he might be thought to have been "run-around", the grievor did not come within the narrower meaning given the term in the collective agreement provision whose effect, after all, is to limit the compensation (although at the same time preserving the work opportunity) for the employee improperly passed over. Although the situation in that case would seem to have been at least in some respects analogous to a "run-around" (Which may be said of most cases of improper assignment), the arbitrator held that it did not come within the run-around provision, and that the grievor was entitled to recover his actual loss of earnings. In this, he followed the decision of an arbitrator in a case heard in 1918.

In my view, what occurred in this case was not a "run-around" within the meaning of article 109. The assignment to which the grievor was entitled was improperly given to another, but not in circumstances which constituted a "run-around" within the meaning of the agreement. The grievor is therefore entitled, by way of compensation to be put in the position he would have been in, had the assignment been made properly.

For the foregoing reasons the grievance is allowed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR