

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 552

Heard at Montreal, Tuesday, June 8th, 1976

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Run-around claim submitted by Brakeman, M. Smith when not called for spare work on Work Extra West and East on September 20, 1975.

EMPLOYEES' STATEMENT OF ISSUE:

It is the Union's position that the Company exceeded the time limits as provided for, in the collective agreement Article 112, step 3, paragraph 2 – last sentence.

FOR THE EMPLOYEE:

(Sgd.) J. SANDIE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

V. E. Hupka	– Manager industrial Relations, Sault Ste. Marie
S. A. Black	– General Manager Rail Division, Sault Ste. Marie
N. L. Mills	– Superintendent-Transportation, Sault Ste. Marie

And on behalf of the Brotherhood:

J. Sandie	– General Chairman, Sault Ste. Marie
-----------	--------------------------------------

AWARD OF THE ARBITRATOR

This is a run-around claim, the grievor asserting that he ought to have been called for certain work. The Union's first submission, however, is that the grievance should be allowed because of the Company's failure to render a decision on the grievance at Step 3 within the required time, that is within thirty calendar days of the date of appeal (see Article 112, Step 3).

The Union's appeal at Step 3 was made by letter dated February The General Manager's decision, declining the claim, is made by letter dated March 22, 1976. The Company stated, however, that it did not in fact receive the appeal until one week after the date on the letter. In that case, if it is the actual communication which constitutes the making of the appeal (and **Case No. 218** suggests that that is so), then the Company's decision was rendered in good time. In any event, it is not clear that this is a claim which would be covered by Clause (d) of the article – that question was not argued. It does not appear, then, that a late decision by the Company would make it subject to payment of the claim. Rather, the situation would simply be that on the expiry of the time limit, the Union would be entitled to proceed to the next stage of the grievance and arbitration procedure.

For the foregoing reasons, the Union's first submission must be rejected.

As to the merits of the claim, it is based on Article 8, section of the collective agreement, which is as follows:

Vacancies for Brakeman employed in Road Switcher Service will be in the following manner:

Firstly from the spareboard;

Secondly, by an assigned Road Switcher employee who has booked O.K. for spare work on his days off;

Thirdly, by the senior available Road Switcher employee and

Fourthly, by the senior available trainman in any other class of service.

Vacancies for Conductors employed in Road Switcher Service will be filled according to the provisions of Article 72.

It seems that there was in fact a requirement for a brakeman to work in road switcher service starting at 8:00 A.M. on Saturday, September 20, 1975. It does not appear to have been possible to fill the vacancy from the spareboard. The grievor was an assigned Road Switcher employee, but he had not booked O.K. for spare work on his days off, and the day in question was one of his days off. The Company was not obliged, therefore, to consider the grievor as coming within this group of employees to whom it was next obliged to look in filling the vacancy. There does not appear to be any claim by anyone in this group, and the Company then considered the "available" Road Switcher employees.

One of the Road Switcher employees was a Mr. Trudeau, who was due to work from 1.00 to 8.00 P.M. on the day in question. The Union contends that he was not "available" because of his commitment to his assignment. He was, however, "available" in the sense that he was free to work starting at 8.00 A.M., for the period the Company required. There is no competing claim based on seniority. The grievor was on his day off. In my view, there was no obligation on the Company to call him for this assignment, even if he was also "available", Mr. Trudeau had more seniority and was entitled to the call.

For the foregoing reasons the grievance must be dismissed.

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