

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 554**

Heard at Montreal, Tuesday, June 8th, 1976

Concerning

**ALGOMA CENTRAL RAILWAY**

and

**UNITED TRANSPORTATION UNION (T)**

**EX PARTE**

**DISPUTE:**

Called and cancelled claim submitted by Brakeman, A.R. Burns for 50 miles at Yard Rates, Steelton Yard, December 11, 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.

Should the Arbitrator rule otherwise the Union will be prepared to argue the merits of the case, submitted by the Company.

**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 claim for payment for "called and cancelled". The Union's first submission, as in **Case No. 552**, is that the grievance should be allowed because of the Company's failure to render a timely decision at Step 3 of the grievance procedure. What is said in **Case No. 552** in this respect is equally applicable in the instant case, and for the reasons there set out, the first submission is rejected.

As to the merits, the grievance is based on Article 22 of the collective agreement, which is as follows:

#### **Called and Cancelled**

Trainmen called for service and afterwards cancelled or set back, will be paid a minimum of fifty (50) miles at the pro rata rate of pay applicable.

On December 11, 1975, a vacancy arose for a Brakeman on a regular assignment. Pursuant to Article 73, the Company called the first out spareboard man, Mr. Jolin, but he could not be reached. The Company then called the second out spareboard man, the grievor. The grievor's wife answered the telephone, as the grievor was not then at home. It is the Union's contention that the grievor's wife accepted the call, which was for a 3:00 p.m. assignment, it being then about 2:00 p.m. The Company's version of the facts is that the grievor's wife simply advised that she would attempt to get him. The grievor's wife did call him, and he returned home to get ready for work.

The grievor appears to have considered that he had effectively been called to work. The Company, it seems, expected to hear some confirmation that he had accepted the call. Not hearing from him, the Company again telephoned Mr. Jolin, who was reached on this occasion, and who accepted the call. Then, according to the grievor, the Company called to say that he was not needed. On the Company's version, the grievor telephoned, and was then advised he was not needed. The significance of this difference between the two versions would be that if the grievor did telephone in, that would he did so in order to accept the call, so that he was not effectively before that time. On the grievor's version, it would appear that he felt the call had been accepted and that all he need do was report.

The Union's case is based on the statement of the grievor himself, whereas the Company's is based on the statement of the Yardmaster which in turn is largely based on what he was told by another employee who actually made the call. This evidence does not permit a precise finding as to the facts on this aspect of the case. From all of the material, however, it appears to me that the grievor had been effectively called. It is accepted that an employee's wife may in some circumstances accept a call to work on her husband's behalf. Here, there seems to have been no question as to the grievor's actual availability. If the Company was in doubt as to whether he would be in or not, then in the particular circumstances which have been described it ought to have telephoned him, to see if there was any problem, rather than to try Mr. Jolin, who had not been reached at all. That is, there was in the circumstances a commitment to the grievor which ought to have been treated as having priority at that stage, over the claim of Mr. Jolin. Any uncertainty of the grievor's reporting ought to have been cleared up. In my view, and having regard to the particular circumstances, the grievor was in fact called and then cancelled within the meaning of Article 22. He is therefore entitled to the relief claimed, and I so award.

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