

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 684

Heard at Montreal, Tuesday, November 14, 1978

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Claim of Brakeman J. Rainville for loss of earnings when not called for work on Train No. 5, January 18th, 1978.

EMPLOYEE'S STATEMENT OF ISSUE:

Mr. J. Rainville was working as a Brakeman on the Spareboard at Hawk Junction Terminal.

Due to a vacancy in a crew scheduled to go to work at 1130 hours, Mr. Rainville, the first-out Spareboard Brakeman, was called for work. A short time later a vacancy became apparent in a crew scheduled to go to work at 1115 hours and another Brakeman was called. On arrival at work, Mr. Rainville brought this to the attention of supervision, where a change could have rectified the situation.

Brakeman Rainville submitted a claim for loss of earnings between what he earned and what he would have earned had he been called to work for the job commencing at 1115 hours.

The claim was declined, but a payment of run-around was made. The United Transportation Union Local 885 contends the Company has paid similar claims in the past, especially after the Company has acknowledged their mistake in letter of June 29th, 1978.

FOR THE EMPLOYEE:

(SGD.) J. SANDIE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

V. E. Hupka – Manager Industrial Relations, 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

The grievor, a Brakeman on the spare board at Hawk Junction, was first in line to be called for work. The first assignment to become available on the morning in question appears to have been Extra 160 West, ordered for 11:30, the crew being called at 09:30. There were two vacancies in that crew, it seems, and the grievor was one of those called. That was quite correct. The grievor had, at that time, a claim to be called for that work, and he had no claim for any other work then.

At about 09:40, the Assistant Trainmaster was made aware that one of the members of the regularly assigned crew of Train No. 5, ordered for 11:15, did not respond to his call. The call had been made in the usual way. The Company then looked again to the spare board and called the person next in line to fill that vacancy. This vacancy became known to the Company after the grievor had been properly called, although it involved an assignment leaving before the grievor's. Had the vacancy been known earlier, the grievor would have had a right to it.

When the grievor became aware that a vacancy had opened up on Train No. 5, he requested that assignment instead of the one he had received. It was a more lucrative assignment. The Company did not change the grievor's assignment, although it does not appear that the situation contemplated by the second paragraph of Article 30 (to be set out below), had occurred. Thus, it would be proper to conclude that the grievor was, in the circumstances of this case, run-around. The Company eventually acknowledged that, and paid the grievor the fifty mile payment contemplated by Article 30. In addition, of course, the grievor was paid for his actual assignment.

Article 30 of the collective agreement is as follows:

Run-Arounds

When unassigned trainmen are available and are run-around at terminals they will be paid fifty (50) miles for each run-around and hold their turn out.

Unassigned trainmen who have come on duty in their turn, and have got their engine and have commenced work, will remain with train called for, even though another crew comes on duty after, and gets out of terminal first. The first crew will not be entitled to a run-around under this Article. In case of accident when main line is blocked, the first crew available may be called to take out auxiliary outfit. This will not constitute a run-around under this Article.

When Company ties up crews that are ready for duty and another crew passes them while tied up, it will be considered a run-around and will be paid for as such and for every crew that passes while so tied up.

If a spare trainman is called for work, when an older man is available who could have been called, the older man shall put in a time slip and will be paid for four (4) hours and shall stand first out.

The Union contends that the grievor should be paid the amount that he would have earned had he gone out on Train No. 5. It is argued that he was improperly denied that assignment, and that the proper remedy for that violation of the agreement is that the grievor be paid the amount he would have earned had the agreement not been violated. Such payment would, of course, be reduced by the amount of his actual earnings. This argument is, in a general way, well founded. It was accepted in **CROA Case No. 5**, although that decision appears to have been based particularly on a provision relating to conductors' rights where seniority is a factor to be considered in replacement. The instant case does not turn on a clause of that sort.

In the instant case, it is my view that Article 30 of the collective agreement deals expressly with the matter of run-arounds: it establishes when they occur, and it provides for the payment to be made and the remedy available in such cases. That remedy is that trainmen who are run-around are to be paid fifty miles for each run-around and hold their turn out. The grievor was paid the fifty miles, and of course he was next out. The requirements of the collective agreement were thus met.

There was no violation of the collective agreement, and the grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR