

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 808

Heard at Montreal, Tuesday, February 10, 1981

Concerning

BRITISH COLUMBIA RAILWAY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Trainman C.S. Mulhall claiming 8 hours' payment for run-around.

EMPLOYEES' STATEMENT OF ISSUE:

On April 29, 1980, trainman C.S. Mulhall was called by telephone for the 1800 yard in North Vancouver. The crew office has admitted that his home phone was busy.

The Company's position is that they are not obligated to call Mr. C.S. Mulhall in person declining run-around.

The Union contends that this is a violation of Article 123(b) and when they could not reach C.S. Mulhall by phone they should have called him in person. The Union requests for these reasons that C.S.

Mulhall be compensated 8 hours' payment for being run-around in accordance with Article 307(a) of current collective agreement.

The Company has declined the Union's request.

FOR THE EMPLOYEES:

(SGD.) K. A. LINDLEY

GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. A. MacDonald – Vice-President, Labour Relations, Vancouver
H. Collins – Supervisor, Labour Relations, Vancouver
B. M. McIntosh – Labour Relations, Vancouver

And on behalf of the Brotherhood:

K. A. Lindley – General Chairman, Surrey
J. H. Sandie – Vice-President, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The grievor was, at the material times, assigned to the trainmen's spareboard at North Vancouver. If, in the circumstances of this case, he was indeed run-around then he would be entitled to eight hours' pay pursuant to Article 307(a) of the collective agreement.

It was, it is clear, the grievor's turn to be called, and the Company did in fact attempt to call the grievor for the 1800 yard assignment in North Vancouver on April 29, 1980. It is also clear that the grievor did not in fact receive a call. The issue in this case is as to the sufficiency of the Company's efforts to call the grievor, having regard to the requirements of Article 123(b) of the collective agreement. That Article is as follows:

123 (b) Trainmen will be given a two (2) hour call when practicable and when telephone service is available, call may be given by telephone. When for any reasons a call cannot be made by telephone, Trainmen will be called in person.

In the instant case the Crew Dispatcher did attempt to call the grievor in his turn. The Dispatcher's log shows that between 1600 and 1605 attempts were made to reach the grievor by telephone. The grievor's home telephone number was called and no answer was made. It was then verified with the telephone company that that number was ringing. Of course, it is possible, as the Union argued, that despite the telephone company's verification the telephone in the grievor's home was not in fact ringing. Verification by the telephone company should, however, be accepted as *prima facie* evidence that the telephone was in order. On the balance of probabilities, and given the evidence of the Dispatcher's log, being a record kept in the ordinary course of his duties, it is my finding that the grievor's telephone number was properly called, and that no answer was made. The Dispatcher called an alternate number for the grievor but again, there was no answer.

In these circumstances, I do not think that it would be correct to say that the call could not be made by telephone. It appears from the evidence that it could indeed be made, and was made. It was not, however, received, perhaps because the grievor was not there to receive it. Article 123(b) does not require a call to be made in person whenever a telephone call does not result in contact with the employee. Rather, it requires a call to be made in person where a telephone call "cannot be made". What is contemplated in my view, is the situation where telephone service is not available or has broken down. The first sentence of Article 123(b), it will be noted, provides that calls may be given by telephone "when telephone service is available". Here, telephone service was available, and telephone calls were made. The collective agreement does not go on to provide that where telephone service is available and where a telephone call is made but not answered, a personal call must then be made.

In the circumstances of the instant case I find that there was no violation of Article 123(b). Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR