

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 853

Heard at Montreal, Wednesday, September 9, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Engine Service Brakeman G.W. Kowalchuk of Dauphin, Manitoba April 11, 1980.

JOINT STATEMENT OF ISSUE:

At 2100 April 11, 1980, Engine Service Brakeman G.W. Kowalchuk was called for the position of Locomotive Engineer for Train 839. When a response was not received at his residence, Engine Service Brakeman Kowalchuk was held off the working board under the provision of Paragraph 137.9 of Article 137 of Agreement 4.3.

As a result of being held off the working board, E.S.B. Kowalchuk placed a time claim for loss of earnings on his regularly assigned position on Trains 841-842. The time claim was subsequently declined by the Company.

The Brotherhood grieved, contending: **(a)** Engine Service Brakeman Kowalchuk had indicated he did not wish to accept calls as a Locomotive Engineer on a tour of duty basis. Consequently, he is exempted from the penalty provisions of Paragraph 137.9 of Article 137. **(b)** The penalty provisions of Paragraph 137.9 of Article 137 can be invoked only if the employee is contacted and declines the call.

The Company declined the appeal.

FOR THE EMPLOYEES:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. E. MORGAN
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows – System Labour Relations Officer, Montreal
P. L. Ross – Coordinator Transportation - Special Projects, CNR, Montreal
K. Bekker – Assistant Superintendent, Saskatoon

And on behalf of the Brotherhood:

L. H. Manchester – General Chairman, Winnipeg
R. Proulx – General Chairman, Quebec

AWARD OF THE ARBITRATOR

Article 137.9 of the collective agreement is as follows:

137.9 Engine Service Brakemen who do not desire to accept calls for work as a Locomotive Engineer on a tour of duty basis will so notify their supervisor in writing at the time they become qualified for promotion to Locomotive Engineer, at each Spring and Fall change of timetable, and at time of demotion from the Locomotive Engineers' working list. Engine Service Brakemen who do not advise their supervisor in accordance with the previous sentence will, when available for service, be called as required in seniority order to protect work as Locomotive Engineers. If there are no such Engine Service Brakemen available when service as a Locomotive Engineer is required, the junior available Engine Service Brakeman who has advised his supervisor in accordance with the first sentence of this paragraph will be called and must accept such service. In the event that an Engine Service Brakeman fails to respond to a call on a tour of duty basis, he will not be considered as available for service in any capacity until such time as the employee accepting the call has returned and is released from duty at that terminal. The foregoing penalty provision will not apply when there are no other qualified employees available to protect a position on which the Engine Service Brakeman can be used.

The grievor had properly notified the company that he did not desire to accept calls for work as a Locomotive Engineer on a tour of duty basis. He was, nevertheless, subject to call (in reverse order of seniority of available personnel) pursuant to the third sentence of article 137.9. The grievor was called pursuant to that provision, but was absent, and did not in fact respond.

In my view, the penalty provision set out in the fourth sentence of article 137.9 applies in these circumstances. Employees who give notice under the first sentence of that provision are not thereby completely exempted from being called. They may be called in certain circumstances, and where properly called (and the grievor was properly called), they "must accept such service". The penalty provision set out in the fourth sentence then applies to Engine Service Brakemen generally who fail to respond.

While employees who are only conditionally subject to call need not necessarily keep themselves constantly available, the existence of a penalty provision such as that in article 137.9 – or indeed the implications of the job itself – may be said to make it desirable for an employee in such a position to take appropriate steps to be advised as to the likelihood of a call, so that he will be in a position to respond. As the term appears in article 137.9, "respond" would seem to be used in the sense of "accept". In any event the grievor in the instant case did not respond to the call in any sense, and the penalty provided for by the article applied.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR