CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 960

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer V. Heringer of Saskatoon, Saskatchewan for loss of earnings November 6, 1981.

JOINT STATEMENT OF ISSUE:

On November 6, 1981, due to the spareboard for Locomotive Engineers being exhausted, Engine Service Brakeman K. L. Orford was called and worked as Locomotive Engineer on regular passenger service assignment handling Train No. 680 from Saskatoon to Regina and Train No. 683 back to Saskatoon.

Locomotive Engineer V. Heringer, who was assigned to regular yard assignment at Saskatoon, contends he should have worked on the passenger service assignment; he has submitted a claim for loss of wages, that is, the difference between his actual earnings on the yard assignment and the earnings of Locomotive Engineer Orford November 6, 1981. The Company has declined the claim.

The Brotherhood has progressed the claim on the grounds that Paragraph 63.1 of Article 63, as well as Paragraphs 64.2 and 64.5 of Article 64, Agreement 1.2 were violated which is denied by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) A. JOHN BALL	(SGD.) G. E. MORGAN
GENERAL CHAIRMAN	FOR VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows – Manager, Labour Relations, Montreal
M. Proulx – Labour Relations Assistant, Winnipeg

And on behalf of the Brotherhood:

A. J. Ball – General Chairman, Regina

AWARD OF THE ARBITRATOR

The articles relied on by the Union are as follows:

> **63.1** A locomotive engineer will not be considered available unless he is on the working board except when no other locomotive engineer is available.
>
> **64.2** No reduction will be made so long as:
>
> > **(a)** Locomotive engineers in assigned or extra passenger service or earning the equivalent of 4000 miles per month.
> >
> > **(b)** Locomotive engineers in assigned service paying freight rates are averaging the equivalent of 3200 miles per month.
> >
> > **(c)** Locomotive engineers in pool or in chain gang service paying freight rates are averaging the equivalent of 3800 miles per month.
> >
> > **(d)** Locomotive engineers assigned to spareboards are averaging the equivalent of 3720 miles per month.
>
> **64.5** In assigned yard service, regulations will be made that require each regularly assigned locomotive engineer to layoff when he has accrued 3800 miles in his mileage month.

As to the latter two Articles, since there was no reduction in the number of engineers on the working list, and since the grievor, not having accrued 3800 miles in the month, had not been required to lay off, it is clear that there was no violation of the Collective Agreement in either case. The grievor worked his regular yard assignment on the day in question. His claim is that he ought to have been called to relieve on a road service assignment, the incumbent being absent, the spareboard being exhausted, and no regularly assigned road service engineers being available.

Article 63.1, by itself, does not give preference to one qualified locomotive engineer over another except with respect to those on the working board. In the instant case, the engineer called to perform the work was the senior locomotive engineer not working as such. The grievor was a locomotive engineer with a regular yard assignment. Neither of them had any particular entitlement to be called, under the provisions referred to.

The engineer who was called for this assignment was called because the working board had been exhausted. He was not "added to the working board" as the Union contends. Further, there was no violation of Article 51.6, which permits yard service engineers to work a spare shift in certain circumstances. This was not a "spare shift" within the meaning of Article 51.6 (which is within the yard service section of the Collective Agreement; rather, it was a case of relief of an assigned road service engineer. Employees on the spare board would have, in their turn, entitlement to such a call. After that, the Collective Agreement makes no provision. Certainly there is no provision allowing someone in the grievor's position simply to give up his regular assignment in order to take up a more attractive run.

No violation of the Collective Agreement has been shown, and the grievance is dismissed.

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