

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1292

Heard at Montreal, Tuesday, November 13, 1984

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of the Union on behalf of spare employee Ms. C. O'Donnell for accommodation costs and deadheading.

JOINT STATEMENT OF ISSUE:

On April 26, 1984, the Company established a spare list at Timmins, to which Ms. C. O'Donnell was assigned. The Union contended that the Company could not establish such a spare list nor could Ms. O'Donnell transfer from the North Bay list to the Timmins list. The Union claimed accommodation expenses at Timmins for the nights of April 26 and 27 for Ms. O'Donnell and deadheading time from Timmins to North Bay on April 28. The Company denied the claim.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
REPRESENTATIVE

FOR THE COMPANY:

(SGD.) P. A. DYMANT
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay
J. H. Singleton – Manager Passenger Services, North Bay

And on behalf of the Brotherhood:

T. N. Stol – Representative, Don Mills

AWARD OF THE ARBITRATOR

The sole issue in this case is whether the grievor, Ms. C. O'Donnell, waived her entitlements for accommodation costs and deadheading allowances by agreeing to the Company's offer to perform the spareboard at Timmins, Ontario. There is no dispute that North Bay continued to be the grievor's home terminal while she accepted assignments off the Timmins' spareboard. Moreover, there is no question that the Company could not force the grievor to accept assignment to the Timmins' spareboard. Or, more succinctly, if required to accept such assignments the grievor would be clearly entitled to the allowances contained in the collective agreement while at the away-from-home terminal in Timmins.

The evidence, however, demonstrated that Ms. O'Donnell on April 26, 1984, voluntarily accepted assignment off the spareboard at Timmins for the simple reason that she was provided (due to the illness of an employee who worked out of Timmins) opportunities for employment for a full work week for a protracted period of time. Moreover, her subsequent conduct during the month of May, 1984, demonstrated that her assignment off the Timmins' spareboard on April 26, 1984 was voluntarily accepted. The Trade Union readily admits that no grievance was submitted to the Company with respect to those assignments because the grievor was content with the work she received at Timmins. And, as the Company stated, the assignments at Timmins commencing on April 26, 1984 were all actuated for the same reason. That is to say, the illness of another employee gave rise to a golden opportunity for the receipt of assignments off the Timmins' spareboard. Moreover, the evidence also indicated that two employees rejected the opportunity to work out of Timmins and suffered no adverse consequence as a result of their refusal.

Accordingly, I am satisfied that the grievor waived her entitlements to the benefits she has requested as if she were operating out of an away from home terminal while she accepted assignments off the spareboard at Timmins.

The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR