CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1511

Heard at Montreal, Tuesday, May 13, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Nine claims of Locomotive Engineer Y. Leroux, Belleville, Ontario for being run-around at various times between January 2 and January 4, 1985, inclusive.

JOINT STATEMENT OF ISSUE:

At 1016 on January 1, 1985, Locomotive Engineer Leroux was notified by the Crew Management Centre that he had been displaced from a temporary vacancy in the West Pool. Mr. Leroux then declared to the Spare Board, his name being placed at the bottom of the Board. His first tour of duty after being placed on the Spare Board was an Extra Yard ordered for 1800 on January 4, 1985.

Locomotive Engineer Leroux subsequently submitted nine claims for being run-around contending that, at the time of his declaration to the Spare Board, the Company violated both an alleged past practice and article 58.22 of Agreement 1.1 by placing his name at the bottom of the Spare Board. It was further contended that, as a result of the improper placement of his name, Mr. Leroux was run-around nine times between the time his name was placed on the Spare Board and the time he was first called to work on January 4.

At Step 3 of the Grievance Procedure, the Company acknowledged that, in placing Mr. Leroux's name at the bottom of the Spare Board at the time he so declared, it had deviated from the past practice at Belleville and, as a result, offered payment of the difference in earnings between the first round trip he would have worked and the first assignment he actually worked. The Company, however, maintained that article 58.22 had not been violated and declined payment of the nine runaround claims.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) P. M. MANDZIAK	(SGD.) M. DELGRECO
GENERAL CHAIRMAN	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

J. B. Bart	– Labour Relations Officer, Montreal
D. W. Coughlin	– Manager Labour Relations, Montreal
S. L. Pound	– System Transportation Officer, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, St. Thomas
H. Schamerhorn	– Local Chairman, Belleville
Y. Leroux	– Grievor

AWARD OF THE ARBITRATOR

Article 58.22 of Agreement 1.1 governs the operation of the spare board as it may apply to Locomotive Engineers in the bargaining unit as follows:

> 58.22 Locomotive engineers assigned to the spare board will be run first-in first-out in order of their release from previous duty and, if qualified and available, will be entitled to (1) all relief work consistent with this Article, (2) extra yard and transfer service, and (3) extra road service when locomotive engineers assigned to pool or chain gang service are not available.

In other words, when a Locomotive Engineer is assigned to the spare board he normally goes to the bottom of the list. As work opportunities arise the Company is required to offer them on a rotational basis in accordance with an employee's placement on the list.

Accordingly, where an employee is displaced from a regularly scheduled position and is assigned to the spare board, as aforesaid, he would go to the bottom of the list.

The Company, however, in several if its terminals has adopted a practice which is at variance with the strict language of article 58.22. One such example is at the terminal located at Belleville, Ontario. That practice has been incorporated into a policy statement which reads in part as follows:

> Engineers displaced from TVs declaring to spareboard are to be cut in from last off duty time if they declare immediately. However, if not immediately, and declares spareboard, employee takes turn on board from time of declaration.

The Company has conceded that when the grievor was displaced from a temporary vacancy in the West Pool he should have gone, as the practice prescribed, to the top of the spareboard because he had declared his availability "immediately". Instead, the Company sent him to the bottom of the spareboard resulting in the grievors' loss of work opportunities during the period between January 2 and 4, 1985 inclusive.

The Company alleges, however, that because article 58.22 is not applicable to the grievor's situation the remedy that otherwise would pertain to a violation of that provision under article 80.1 of Agreement 1 is not available to his benefit. Article 80.1 reads as follows:

> 80.1 A locomotive engineer first out in unassigned service who is available and is run around avoidably will be paid as outlined below and hold his turn out;
>
> Runs under 225 pay miles – 50 miles at minimum through freight rate
>
> Runs 225 pay miles or more – actual time lost
>
> NOTE: In the application of paragraph 80.0 "actual time lost" will be the difference between what the locomotive engineer would have earned on the tour of duty he should have been called for in his turn and the earnings of the first tour of duty for which he is called after thr run-around takes place. Such difference, if any, will be charged against his total mileage in the month claim is paid.

There is no dispute that in cases where an employee on the spareboard is improperly denied a work opportunity and who is otherwise available is paid the penalty provided in the above provision. The Company argued because of the grievor's anomalous circumstance that it was free to pay the grievor the compensation it determined to be appropriate in the circumstances.

In dealing with the Company's submissions I am satisfied that in a *de facto* sense the Employer has amended article 58.22 by the introduction of its practice of sending an employee to the appropriate designated spot on the spareboard when he complies with the requirement of declaring his immediate availability. The practice represents, in my view, a clear and unambiguous representation that the strict requirements of article 58.22 will not apply in the grievor's circumstance. That is to say, an employee would not be required to go, as article 58.22 would normally dictate, to the bottom of the spareboard. And since the Company has conceded that the grievor was improperly "run-around" for no avoidable reason he should be treated, for purposes of compensation, as if he was improperly by-passed in a manner analagous to a violation of article 58.22.

As a result, since the parties have provided under article 80.1 specific relief for that type of infraction the Employer was duty bound to invoke that provision.

This situation represents a pure example of where the doctrine of promissory estoppel should apply. In other words, had the Employer advised the Trade Union at the parties' negotiations it intended to treat aberrations from the practice, as occurred herein, in the manner that has been described then the Trade Union could have engaged in bargaining with respect to its consequences for pay purposes. Instead, the Trade Union has relied on the Employer's practice and thereby would incur a prejudice on behalf of interested employees on the spareboard should the Employer's position prevail.

For all the foregoing reasons the Employer is directed for the period in question to compensate the grievor in accordance with article 80.1 of Agreement 1.1.

I shall remain seized for the purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR