

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1516

Heard at Montreal, Wednesday, May 14, 1986

Concerning

**ONTARIO NORTHLAND RAILWAY**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

**EX PARTE**

### **DISPUTE:**

On November 10-11, 1985, the regular steward was absent, the hostess moved up to steward; the waiter moved up to hostess and the position of waiter was blanked. The Canadian Brotherhood is claiming a violation of article 12.18. Ms. Cook should have been allowed to work.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

The train #124 North Bay to Toronto was allowed to leave North Bay one crew member short rather than call the spare board employee being held on standby. (1.) The Crew was sent short-handed. (2.) Ms. Cook was first out on the North Bay spareboard, and was available for duty. (3.) It has not been the Company's standard practice to run the crews short, except in an extreme emergency when it was too late to call someone or no spare employee was available.

It is therefore the Brotherhood's contention that Ms. C. Cook should have been allowed to work the crew and since she was not called she should be paid for all time on November 10 and 11, 1985 when the train ran short.

### **FOR THE BROTHERHOOD:**

**(SGD.) MARILYNNE PITCHER**  
REPRESENTATIVE

There appeared on behalf of the Company:

A. Rotondo                      – Manager Labour Relations, North Bay  
H. Middaugh                   – Manager Customer Services, North Bay

And on behalf of the Brotherhood:

M. Pitcher                      – Representative, Toronto

## **AWARD OF THE ARBITRATOR**

Article 12.18 of the collective agreement provides:

12.18 When a vacancy in a crew of less than thirty calendar days duration is to be filled, employees in the crew may move up to senior positions in accordance with their seniority and a spare employee will be used to fill the vacancy remaining in that crew.

Both the CROA jurisprudence and the arbitral precedents in the private sector have interpreted such clauses, as article 12.18, as imposing upon the Employer the procedure that should be followed in its filling a vacancy. The clause is not interpreted to mean that the Employer must fill a vacancy if it can otherwise carry on its enterprise with what appears to be a manpower shortage. The decision to fill a vacancy, in other words, remains part of management's discretion in the operation of its enterprise.

Thus, when the Company rearranged its regular work force to cover the absence of its steward's position it was not required to cover the vacancy that resulted. Had the Company decided to do so, then obviously it would have been required, as article 12.18 prescribes, to have recourse to the spareboard.

For all the foregoing reasons the grievance is denied.

**(signed) DAVID H. KATES**  
**ARBITRATOR**