

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1759

Heard at Montreal, Tuesday 8 March 1988

Concerning

### ALGOMA CENTRAL RAILWAY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Grievance of Conductor R. Matthews and Crew with respect to discipline assessed and loss of earnings incurred account failure to be available for regular assigned run Train No. 10 at Hawk Junction, Thursday, April 23, 1987 account improper application of rest rule resulting in unnecessary delay and expense.

#### **JOINT STATEMENT OF ISSUE:**

On Thursday, April 23, 1987, Conductor R. Matthews and Crew who were in assigned service were at the Away-From-Home Terminal, Hawk Junction, Ontario. They did not book rest on going off duty at 0745 hours and when advised at approximately 2100 hours that they would be required for 2300 hours, they, in turn, advised that they had already booked unfit for duty and would be okay for 0700 hours on April 24, 1987.

Conductor R. Matthews and Crew were withheld from service by the Company, an investigation was conducted with discipline of ten demerit marks assessed to the records of Conductor R. Matthews and Trainmen W. Skouris and J. Elkas account failure to be available for regular assigned run Train No. 10 at Hawk Junction, Thursday, April 23, 1987, account improper application of rest rule resulting in unnecessary delay and expense.

The Organization contends as follows: 1.) that Conductor Matthews and Crew should not have been withheld from service; 2.) that Conductor Matthews and Crew did the proper thing because of waiting so long for their call, they felt tired and booked unfit for duty in order to comply with Algoma Central Railway General Operating Instructions, Special Notice No. 13 dated January 1, 1987, 3.) Instruction contained on Form 900136 – Train Register, 4.) the concern put forth on “rest” in the Honourable Mr. Justice René P. Foisy Report of December 1986, 5.) that the Company does not have the right to force men to go to work when they are tired.

The Organization requests that the Company compensate Conductor Matthews and Crew for loss of earnings from Hawk Junction to Sault Ste. Marie, for bus fare from Wawa (Hawk Junction) to Sault Ste. Marie and that the discipline of 10 demerit marks be withdrawn.

The Company contends that: 1.) There is no provision in the Collective Agreement for Trainmen to book rest several hours after going off duty, and 2.) Article 75, Paragraph 2, provides “Regularly Assigned Trainmen will, when available for service, make their assigned trip or run notwithstanding the train may be late or running ahead of time except as otherwise provided in this Article and in Article 25 ‘A’”. 3.) Conductor Matthews and Crew are all long service employees and know the pattern of operation for which they were working. 4.) This crew effectively withdrew their services in a most arbitrary fashion.

Several attempts were made to resolve this grievance to the satisfaction of both parties to the extent that the Company *reluctantly* (emphasis added) offered to reduce the discipline to a “Reprimand”, to reimburse the bus fare paid, but could not agree to the loss of earnings portion of this grievance.

The Company’s offer was declined by the Organization.

**FOR THE UNION:**

**(SGD.) J. SANDIE**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) V. E. HUPKA**  
FOR: VICE-PRESIDENT, RAIL

There appeared on behalf of the Company:

V. Hupka – Vice-President, Sault Ste. Marie  
N. L. Mill – Superintendent, Transportation, Sault Ste. Marie

And on behalf of the Union:

J. Sandie – General Chairman, Sault Ste. Marie  
B. Marcolini – Vice-President, Ottawa

**AWARD OF THE ARBITRATOR**

The material facts are not in dispute. The grievors manned Train No. 11 from Steelton to Hawk Junction, arriving at 0655, and were off duty at 0730 on April 23, 1987. They then proceeded to sleep in the bunkhouse at Hawk Junction. R. Matthews slept for approximately 6.5 hours, W. Skouris for 4 hours and J. Elkas for what is described as 6 hours of interrupted rest. It does not appear disputed that there was a degree of noise outside the bunkhouse during the daytime hours in question which disturbed and ultimately curtailed the ability of the grievors to sleep any better or longer than they did. In the result, therefore, they were all awake by approximately 1330 or 1400. It does not appear disputed that they could generally expect a call for duty at 1800.

In fact the call did not come until 2100, when the grievors were advised by Operator G. Montgomery that Train No. 10 was ordered for 2300. Some 5 minutes previous, however, at approximately 2055 the grievors had notified Operator Montgomery that they considered themselves too tired to undertake the assignment, indicating that with additional sleep overnight they would be able to report fit for duty for 0700 the next morning.

In imposing discipline the Company relies upon Article 75, Paragraph 2 of which provides: “Regularly assigned trainmen will, when available for service, make their regular assigned trip or run notwithstanding the trains may be late or running ahead of time except as otherwise provided in this Article and in Article 25(A).” The Company’s representative stresses that on the day in question Train No. 10 was ordered within four hours of its median ordering time over the sixty day period before and after and it departed within approximately three hours of the median departure time and within four hours of its scheduled departure time.

Booking rest is provided for in Article 49 of the Collective Agreement which is, in part, as follows:

(a) Trainmen who have been on duty eleven (11) hours or more will have the right to book rest at any point on the road, and will resume duty when rest period has expired. Men to be judges of their own condition. Rest period to be deducted in computing overtime. Dispatcher must be given at least one (1) hour’s notice of desire to book rest, but if dispatcher will order the discontinuance of all way work and switching, trains may be taken through to terminal or point where men can be relieved. Conductors and brakemen must take rest at the same time.

In the application of this rule, the rest period shall commence at the time men are tied up in instances when the dispatcher has been given notice of rest desired and, in order to provide accommodation, the men are instructed to take their rest prior to the expiration of eleven (11) hours on duty.

(b) Trainmen will not be required to leave terminals until they have had at least eight (8) hours’ rest, if desired, and such rest must be booked on arrival, and in no case, if rest is booked, shall it be for a less period than six (6) hours and must be in even hours and once booked may not be changed or cancelled. Rest booked to be exclusive of call time.

It is common ground that the above provisions do not apply in the instant case, as the grievors chose not to book rest upon their arrival in Hawk Junction. They did so in the belief that they could get sufficient sleep during the day to enable them to take Train No. 10 on the return trip to Steelton. The Union, nevertheless, relies on a number of provisions governing the obligations of employees. It notes that Section 18 of the Algoma Central Railway General Operating Instructions, Paragraph 1.4 states “All employees must be awake and alert at all times while on duty.” Its

representative also stresses the content of UCOR General Rule L, requiring employees to be vigilant and Rule M which imposes an obligation on employees to exercise care to avoid injury to themselves and others. The Arbitrator's attention is also drawn to Algoma Central Railway Time Table 148, Special Instruction No. 5 of which states "All employees must be awake and alert at all times while on duty." While the Union does not dispute that Article 49 has no direct application in the instant case to the extent that the employees were in fact off duty for more than eight hours at Hawk Junction, it does point to the provision within Article 49(a) which provides that employees are to be the judges of their own condition.

It is not disputed in the instant case that the Company gave the grievors a reasonable opportunity to rest before resuming duty. Nor, however, is it disputed that the grievors themselves made every reasonable effort to sleep before the anticipated call for Train No. 10. Neither party suggests that the other did anything wrong in either respect. The objective reality is that the sleep which the grievors were able to get was limited by the noise and disturbances that are to some extent unavoidable during daytime hours in a bunkhouse that is adjacent to public areas.

It is trite to say that in the scheduling of trains and crews safety must be the primary consideration. Company policy, public policy and the terms of the Collective Agreement reflect a recognition that a train should never be under the care and control of employees who are insufficiently rested and alert. Employees who do work without sufficient sleep may be answerable in discipline for errors of judgement and the sometimes tragic consequences that may result (*see CROA 1677*).

The narrow issue in the instant case is whether the grievors were justified in refusing duty when called at 2100 on April 23, 1987. If they were the Company would have been without just cause to impose discipline (*see CROA 1193*). The case must necessarily turn on its own particular facts.

In the instant case the grievors had four to six hours' sleep in the late morning hours of April 23rd. They then spent approximately ten hours waiting for their call for Train No. 10. It is not disputed that the trip assigned to them would require a further eleven hours to complete. In the aggregate, therefore, they would have found themselves awake for a full twenty-one hours having had only four to six hour's sleep. This is compounded by the fact that they apparently had only four to five hours' rest prior to reporting for duty the day prior, April 22nd. In the circumstances the grievors felt that it was hazardous for them to undertake an assignment which would have involved, in its last two or three hours, operating a train without any sleep at all in the previous nineteen or twenty hours, and with only four to six hours' sleep over a total period in excess of thirty hours.

In these circumstances, having regard to all of the evidence, the Arbitrator is satisfied that the grievors had an honest and valid concern with respect to the safety of undertaking the assignment which they declined, and that they were, on balance, justified in doing so. I must therefore conclude that the Company did not have just cause for the discipline issued against the grievors.

For the foregoing reasons the discipline awarded to grievors Matthews, Skouris and Elkas shall be rescinded and removed from their records, they shall be fully compensated for wages and benefits lost while held out of service for investigation and shall further be compensated for their out-of-pocket expenses incurred to return to their home terminal. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**