CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1916

Heard at Montreal, Thursday 13 April 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of W. B. Calbury, Belleville, dated March 25, 1988.

JOINT STATEMENT OF ISSUE:

At the material times, Trainman Calbury was assigned as Brakeman in Chain Gang Service out of Belleville. As the junior available qualified Conductor not working as such, he was required for service as Conductor on Train 518, ordered for 0800 on March 25 pursuant to Article 49.5(a) of Agreement 4.16. (His assignment to Train 518 pursuant to Article 49.5(a) is not in dispute.) He completed that tour of duty at 1730. At 1700 that day, his regular crew was ordered for Train 218, Belleville to Montreal, returning later on Train 389.

In addition to the payment received for the service performed on Train 518, Trainman Calbury submitted a time claim for a further 268 miles at through freight rates of pay, representing the difference in earnings between what he had earned on Train 518 and what he would have earned had he worked with his crew on Trains 218 and 389. The Company declined payment.

The Union appealed and contends that the grievor is entitled to payment for loss of earnings in accordance with Article 49.7 of Agreement 4.16.

The Company declined the appeal for payment of the time claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD) T. G. HODGES	(SGD) M. DELGRECO
GENERAL CHAIRMAN	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
P. E. Morissey	– Labour Relations Officer, Montreal
R. R. Paquette	– Labour Relations Officer, Montreal

And on behalf of the Union:

T. G. Hodges	– General Chairman, St. Catharines
G. Binsfeld	– Secretary/Treasurer, GCA, St. Catharines
E. A. Cairns	– Local Chairman, Belleville

AWARD OF THE ARBITRATOR

The material establishes beyond controversy that Trainman Calbury was required for service on Train 518 when the Company was unable to find any other qualified employee to protect a temporary vacancy as conductor on that

train. As a result of that mandatory placement he missed the tour of duty of his regular crew for Train 218 from Belleville to Montreal, returning on Train 389. It is not disputed that the grievor would have earned more wages, in the amount of $190.61, had he not missed his regular assignment on Trains 218 and 389.

The sole issue is the interpretation and application of Article 49.7 of the Collective Agreement in the circumstances. It provides as follows:

> 49.7 Employees liable for service as Conductors may be held off their assignments to meet the requirements of the service and to ensure that employees will be available two hours prior to the time a Conductor is required. When so held, employees shall be paid not less than the earnings they would have made on their assignment.

The grievor was plainly an employee "liable for service as Conductor" within the contemplation of the foregoing provision. The Company submits that the word "held" would apply only in the grievor had been summoned from his regular assignment to await a tour of duty on a later train which would result in a reduction of his earnings. Its representative submits that in the instant case, as the grievor was pressed into service on a train which departed before his regularly assigned train, the article has no application. The Arbitrator has substantial difficulty with that interpretation.

As a general matter the words of a collective agreement should be interpreted having regard both to their specific content and fundamental purpose. As noted in CROA 334, which dealt with the provisions of a similar article, the purpose of a provision phrased in the terms Article 49.7 "... is to secure to an employee the earnings associated with the job he holds." Giving the words in the article their normal meaning, it appears to the Arbitrator that the concept of being "held off" one's normal assignment may operate regardless of when the removal from that assignment commences. In the general terminology of the Collective Agreement the word "held" is used to connote the situation of an employee who is, for one reason or another, removed from his regular service or assignment in a general sense. When an employee is held at the away-from-home terminal (Article 18) or held out of service pending a disciplinary investigation, the interpretation of the word "held" advanced by the Company would appear to apply. The context of Article 49.7 is different, however. In the Arbitrator's view, given the purpose of Article 49.7, the term "held off" must be given a wider and more liberal application, and be taken to include any circumstance where, at the instance of the Company, an employee is forced away from his or her regular assignment, wherever the employee may be at the time of that assignment.

In the instant case it appears to me incontrovertible that Trainman Calbury was held off his own regular assignment solely because of the fact that the temporary tour of duty given to him, and which he had no alternative but to accept, forced him away from his home terminal for a period of time overlapping the departure of his regular assignment. I do not see how the Company can assert in these circumstances that it did not effectively hold the grievor away from his regular assignment. It was, of course, open to the parties to agree to protect the earnings of employees whose regular assignment precedes a replacement tour of duty while providing no protection to the employee whose regular assignment is scheduled afterwards. However, as the words of the provision can reasonably be interpreted to support either result, I can see no reason to prefer the construction advanced by the Company which leads to admittedly arbitrary, if not absurd results. In the instant case it appears that the parties can point to past practice supporting both views. Where competing interpretations are possible, but one appears to lead to invidious and discriminatory results, the Arbitrator is more comfortable with the presumption that the parties intend their collective agreement to be rational.

For the foregoing reasons the grievance is allowed. The Company is hereby ordered to pay forthwith to the grievor the amount of his claim, being the difference in wages between the earnings he would have received had he worked with his regular crew on Trains 218 and 389 and the lesser amount earned in service on Train 518. I retain jurisdiction in the event of any dispute with respect to the calculation compensation.

April 14, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR