CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1988

Heard at Montreal, Tuesday, 9 January 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of the Organization with respect to Conductor B. Gignac and Brakeman J. Rainville and W. Bain for one hundred and fifty (150) miles at Roadswitcher rates for work performed on November 12, 1988 account crew called outside the advertised starting time of the assignment.

JOINT STATEMENT OF ISSUE:

Conductor B. Gignac and Brakemen J. Rainville and W. Bain were assigned to Roadswitcher service at Hawk Junction, Ontario working Tuesday through Saturday with Sunday and Monday off, with an advertised starting time of 3 hours between 0800 and 1100 per bulletin and in accordance with Article 8(c)2(b).

On the day previous to the grievance, Conductor B. Gignac and crew were on duty nine (9) hours and twenty (20) minutes. When going off duty at 1950 hours, Conductor Gignac and crew booked fourteen hours rest as per the "Note" to Article 8(c)3.

The Union contends that the crew can only be called for duty during the advertised starting times between 0800 and 1100 per Article 8(c)2(b). After 1100 hours the crew are on assigned time off and as such entitled to premium pay if called.

The Company contends that Article 75 recognizes that road crews may be ordered earlier or later than advertised and that "regularly assigned trainmen will, when available for service, make their regular assigned trip or run notwithstanding the trains may be late or ...". It was the regularly assigned crew that made themselves unavailable until 50 minutes after the advertised starting time, however, they were ordered to make their run when they became available.

The Company has declined payment of premium pay accordingly.

FOR THE UNION:	FOR THE COMPANY:
(SGD) J. SANDIE	(SGD) V. E. HUPKA
GENERAL CHAIRPERSON	FOR: VICE-PRESIDENT – RAIL

There appeared on behalf of the Company:

V. E. Hupka	– Manager, Industrial Relations, Sault Ste. Marie
N. L. Mills	– Superintendent, Transportation, Sault Ste. Marie
J. N. Gardner	– Labour Relations Officer, Sault Ste. Marie

And on behalf of the Union:

J. H. Sandie	– General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

Article 8 of the Collective Agreement provides, in part, as follows:

> **8(c) 2(b)** The starting time for each crew will be as required to suit operational requirements within a time lapse of three hours and shall be bulletined accordingly.

The material establishes that following their tour of duty on November 11, 1988, which involved some overtime hours, the grievors booked fourteen hours' rest. This they were entitled to do under the terms of the Collective Agreement. On the following day they were not available for duty during the three hour bulletined starting time for their assignment, which fell between 0800 and 1100. In effect the Company held the departure of their train until they did become available for duty.

The material establishes that in so doing it departed from the normal practice. It is common ground that in the past when employees have been unavailable for roadswitcher duty during their bulletined starting time the Company has called a relief crew to replace them, and has credited the regular crew with their mileage guarantee for the day. It does not appear disputed that this might arise in the circumstance of an unforeseen emergency in the day prior which might have required substantial overtime of the regular crew, thereby making them unavailable for the bulletined starting time on the following day.

In the instant case the Company submits that the grievors are not entitled to the same protection because they effectively created the situation by booking rest for fourteen hours at the conclusion of their previous tour of duty. With that assertion the Arbitrator has substantial difficulty. The ability to book fourteen hours' rest is a right enjoyed by the employees under the terms of the Collective Agreement. There is nothing implicit in that document to suggest that employees who make use of that right must be deemed to have forfeited other protections. To be sure, if the Company could establish that the employees' right was in some way abused, as for example by working excessive overtime without justification on a prior tour of duty, the employees' claim might arguably be fraudulent. At the very least the unjustified logging of overtime would render employees susceptible to discipline. There are, in other words, means by which the Company can protect against abuse in this regard.

There is no evidence of abuse before the Arbitrator in the instant case. The legitimacy of the overtime worked by the grievors on the previous tour of duty is not challenged. Nor is their right to claim fourteen hours' rest under the terms of the Collective Agreement. In the circumstances of this case, therefore, the Arbitrator cannot accept the position of the Company that the employees were not entitled to the protection given to other crews in similar circumstances. Nor am I satisfied that the terms of Article 75 of the Collective Agreement assist the employer. The second paragraph of that provision addresses the obligation of regularly assigned trainmen who are available for service to make their regular assigned trip notwithstanding that their train may be late or running ahead of time. That provision does not address or in any way modify the obligation of the Company to honour the requirements for the starting time for employees in roadswitcher service clearly established under the specific terms of Article 8(c)2(b) of the Collective Agreement.

What then is the appropriate remedy? The Union submits that the grievors are entitled to be paid 150 miles at roadswitcher rates for work performed on November 12, 1988. I can see no basis in the terms on the Collective Agreement for the payment of compensation according to that formula. It does not appear disputed that if the Company had followed its normal practice, which has not been objected to by the Union, the grievors would not have been required to work the four hours which they did on November 12, and would have been credited their guarantee for that day. In the circumstances I am satisfied that they are sufficiently made whole if the Arbitrator finds that the Company has violated the terms of Article 8(c)2(b) of the Collective Agreement and orders that they be credited with the guarantee on the normal basis of calculation.

For the foregoing reasons the grievance is allowed, in part. I find that the Company violated the starting time requirements for roadswitcher service established in Article 8(c)2(b) by calling the grievors to work outside the prescribed time on November 12, 1988. The Company shall forthwith credit to the grievors the normal daily mileage guarantee for that date.

January 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR