CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1989

Heard at Montreal, Tuesday, 9 January 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

The Organization has claimed 100 miles at Yard Rates on behalf of Trainman K. Byce account not called for a vacancy in the 0800-1600 yard on November 30, 1988.

JOINT STATEMENT OF ISSUE:

Trainman K. Byce was assigned to the Steelton Spareboard and was in the first out position on November 30, 1988. A vacancy existed in the 0800-1600 Yard as well as the Extra North scheduled for 1130 hours that same day.

The Company held Trainman Byce off the Yard position and utilized him for the Extra North. The Company agrees that Trainman Byce was first in line to be called for the 0800 Yard per Article 70(A).

The Organization contends that Trainman Byce, as a protected employee, standing first out on the Spareboard, should have been called for the day yard position per Article 70(A) Section 4-i and Article 73 and that the payment of 100 miles at Yard rates should be made.

The Company contends that while in fact Trainman Byce was first in line for the day yard vacancy, a shortage of manpower necessitated he be held back to work the Extra North scheduled for later in the morning. As a result of being held, Trainman Byce earned more that he would have earned as a Yard Helper, therefore suffered no loss of earnings.

The Company had declined payment accordingly.

FOR THE UNION:

(SGD) J. SANDIE
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) V. E. HUPKA
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

In the instant claim the burden of proof is upon the Union. It must satisfy the Arbitrator, on the balance of probabilities, that the Company has violated the Collective Agreement and that the payment of compensation sought is justified.

In this case the Union seeks the payment of 100 miles at yard rates to employee K. Byce. The Company does not dispute the Union's claim that under the strict terms of Article 70(a)(4)(i) Mr. Byce should have been assigned to the 0800 yard position on November 30, 1988. Instead, for operational reasons, he was held off that position and assigned to Extra 1130 North later that day. It is also not disputed that as a result of that alternative assignment the grievor earned more than he would have but for the Company's violation of the Collective Agreement.

In the circumstances, while I must find that the holding back of Mr. Byce was contrary to Article 70(a)(b)(i) of the Collective Agreement, I can find no ground upon which to make any order of compensation. While, as the Union's representative suggests, there may have been ripple effects impacting work opportunities for other employees because of the grievor's assignment, the only claim before me is that of Mr. Byce. There is, moreover, no evidence to establish conclusively that he was deprived of any other working opportunities or greater earnings as a result of the Company's actions. In these circumstances, therefore, there is no basis established for the payment of any compensation to the grievor.

January 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR