

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1992

Heard at Montreal, Wednesday, 10 January 1990

Concerning

### ALGOMA CENTRAL RAILWAY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim of the Organization with respect to Trainman M. Rivard for lost wages May 1-14, 1988 when not returned to work from lay-off in line with seniority.

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

Brakeman M. Rivard was assigned to the Hawk Junction Spareboard when he booked sick on April 13, 1988. On April 26, 1988 he booked fit for duty, however, he was advised he did not hold a position and was placed on lay-off.

The Company contends that work was available May 1 and 2 and an employee junior to Mr. Rivard was used. Mr. Rivard's wife accepted a call from Operations staff on May 3, 1988 with a message to have Mr. Rivard call the Yard Office. The call and message was repeated 1 or 2 days later with no response. Mr. Rivard was subsequently paid for work performed by a Junior employee on May 1 and 2, however, the Company contends that Mr. Rivard made no effort to contact the Company following 2 telephone messages to his home. Inasmuch as Trainman M. Rivard failed to respond to calls initiated to advise him that his services were required, in accordance with Article 63, he had failed to satisfy the provisions of the Collective Agreement and has no basis for claiming additional payment.

The Union contends that an employee junior to Mr. Rivard was called back to work for the period May 1 to 14, 1988 before Mr. Rivard and that neither Mr. Rivard nor his wife received a call from the Company to return to work at any time nor was there any documentation on the crew sheet calling Mr. Rivard nor any follow-up letter.

The Organization has requested payment for full wages lost during the period May 1 - 14, 1988.

The Company agreed to payment for lost wages for May 1 and 2, however, disagrees with the Union's contention for the remainder of the grieved period.

#### **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**

The sole issue in this grievance is whether Mr. Rivard was or was not called by the Company on or about May 3, 1988. It does not appear disputed that the common practice is for the Company to telephone laid off employees to notify them of available work. The Union relies on Article 63 which provides, in part, as follows:

A laid-off trainman who desires to return to the service when work is available for him must keep the proper officer advised of his address in order that he may be readily located.

The Union's representative submits that the foregoing provision contemplates that employees must be notified in writing in cases of recall. The Arbitrator cannot agree. If the parties had intended to stipulate the means of communication it was open to them to do so. They did not. In the circumstances there would appear to be nothing to prevent the Company from sending an officer or clerk to an employee's home to advise him or her directly of the recall. Likewise, there does not appear to be anything in the language of Article 63 to prevent communication to the employee by telegram, telephone or otherwise. In each case the issue is simply whether adequate notice has in fact been given.

In the instant case, based on the statement of Mr. J.A. O'Leary filed in evidence by the Company, I am satisfied that on or about May 3 Mr. O'Leary telephoned the grievor's home and spoke to his spouse, advising her that he was to call the yard office upon his return. One or two days later he again telephoned, once more to be advised that the grievor was not home. Mrs. Rivard then told him that her husband was "out picking up rocks." Again Mr. O'Leary requested that she advise him to call the yard office. The burden of proof being upon the Union, I am not prepared to conclude on the material before me that Mr. Rivard did not receive notice that work was available as of May 3, 1988.

In the Arbitrator's view there has been full compliance with the requirements of the Collective Agreement. The grievance must therefore be dismissed.

January 12, 1990

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