

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1994

Heard at Montreal, Wednesday, 10 January 1990

Concerning

### ALGOMA CENTRAL RAILWAY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim by trainmen Gignac and Bain for 994 miles at wayfreight rates account not called to pilot CNR trains at Oba, Ontario on March 15, 1988.

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

Trainmen B. Gignac and W. Bain were assigned to Trains No. 5 and 6 operating between Hawk Junction and Hearst, Ontario, with home terminal Hawk Junction.

On Monday, March 14, 1988, CN Rail experienced a derailment on the Ruel Subdivision and subsequently requested ACR to supply 2 pilots at Oba, Ontario for 2300 hours. Due to a shortage of men and motive power, the ACR was not able to accommodate this request.

Upon a further request from CNR, the Company determined that by altering normal train operations on March 15, 1988, train No. 6 from Hearst could be annulled at Oba and the regular crew serve as pilots.

The Union contends that the piloting of foreign trains belongs to competent trainmen at Hawk Junction, conductors if available, assigned to the Northern Subdivision.

The Company does not disagree with the Union's contention. However, in the instant case the spareboard was depleted and the grievors were required to work on their regular assigned run therefore the Company believes that the use of competent Trainmen off of Train No. 6 and subsequently from Steelton Terminal is in compliance with Article 19(a).

The Company has declined payment of the claim.

#### **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**

Article 19A of the Collective Agreement provides for the assignment of trainmen as pilots when foreign line trains are detoured over the Company's road between Franz, Oba and Hearst as a result of emergency situations. Article 12(a) of the agreement further provides:

**12(a)** Trainmen in freight service will not be compelled to perform extra service outside of their regular assignment, where unassigned trainmen are available, except to make up monthly guarantee.

The prohibition in the foregoing provision is predicated on the circumstance "where unassigned trainmen are available". When that circumstance obtains the Company cannot compel trainmen in freight service to perform extra service outside of their regular assignment.

In the instant case the crew of Train No. 6 from Hearst was diverted from its regular assignment to perform extra service in the piloting of CNR trains. What the material further discloses, however, is that there were no unassigned trainmen available at the time in question. None were on layoff and the spareboard was fully depleted.

I can see nothing in these circumstances which prevented the Company from proceeding as it did, or to put it differently, which would have required the Company to assign the work to the grievors on an overtime basis. Absent proof that unassigned trainmen were available, the grievance cannot succeed.

For the foregoing reasons the grievance must be dismissed.

January 12, 1990

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