CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2061

Heard at Montreal, Wednesday, 10 October 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of Conductor L. Brousseau and crew, Capreol, dated April 22 and 23, 1987 for loss of earnings made pursuant to Article 27.2 of Agreement 4.16.

JOINT STATEMENT OF ISSUE:

On April 22, 1987, Conductor Brousseau and crew were called to operate Train 338 from Capreol to Brent, Ontario and went on duty at 1515. Train 338 departed at 1635. However, due to problems with its locomotive consist, Train 338 was turned at a point en route and returned to Capreol. Conductor Brousseau and crew were released from duty at 1930. Another crew under Conductor L.C. Bradshaw was subsequently called to operate Train 338 to Brent.

Contending that his crew should have been called to operate Train 338 to Brent instead of Conductor L.C. Bradshaw and crew, Conductor Brousseau submitted claims for loss of earnings in an amount equivalent to the earnings of Conductor Bradshaw and crew for the round trip. The claims were not paid.

The Union appealed contending that the claims in question were supported by the provisions of Article 27 of the Collective Agreement.

The Company declined the Union's appeal.

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

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
S. F. McConville	– System Labour Relations Officer, Montreal
M. S. Hughes	– System Labour Relations Officer, Montreal
B. H. Mahoney	– Transportation Officer, Montreal

And on behalf of the Union:

T. G. Hodges	– General Chairperson, St. Catharines
M. P. Gregotski	– Vice-General Chairperson, St. Catharines
R. Byrnes	– Local Chairperson, Capreol
R. Lebel	– Vice-General Chairperson, Quebec

AWARD OF THE ARBITRATOR

The Union relies on the provisions of Article 27.2 which are as follows:

> **27.2** Regularly assigned employees will make their regular assigned trip or run when they are available therefore notwithstanding that trains may be late or running ahead of time, except as otherwise provided in this Article and in Article 18 (Held-Away-From-Home-Terminal).

The Union's representative submits that as the grievors were part of a four pool crew, the East Pool at Capreol, they were entitled, pursuant to the foregoing provision, to be assigned, on a first-in first-out basis, to the first train movement out of their home terminal. On that basis he argues that Train 338, which was reassigned to Conductor Bradshaw and crew, should have been assigned to Conductor Brousseau and his crew.

The Company submits that the grievors' assignment was in fact altered to turnaround service pursuant to the provisions of paragraph 6.5 of Article 6 of the Collective Agreement which reads, in part:

> **6.5** Employees will be notified, when called (as provided by Article 61, Calling), whether the tour of duty for which they are being called is in straight-away or turnaround service and they will be compensated according to such notification. Such notification will include the point for which called and will only be altered where necessitated by circumstances unforseen (sic) at the time of call, such as accident, engine failure, snow blockade or other like emergency.

Prior awards of this Office have established a number of principles in relation to the application of collective agreement provisions identical to or substantially similar to those at issue in this dispute. In **CROA 1317**, which concerned the same parties, the Arbitrator found that the Company was justified in paying the grievors their basic day after cancelling their run following an engine breakdown. He specifically concluded that the Company was not required to assign that same run, when it was reordered with new motive power, particularly where the grievors may have been reassigned to a period that would overlap their entitlement to book off for rest. The same reasoning was central to the outcome of a similar case in **CROA 1619**. It is also well established that the language of Article 27.2 does not guarantee that an anticipated assignment will in fact be worked or that an employee's anticipated earnings are guaranteed (*see **CROA 1051***).

In the Arbitrator's view a claim such as the instant case must be assessed carefully in respect of its own particular facts. It is common ground that the grievors went on duty at 1515 on April 22, 1987 and operated Train 338, departing at 1635. En route they encountered difficulty with one of the locomotives in their consist. The train's consist was placed in a siding at Hagarty and the crew returned to Capreol in a locomotive to obtain additional motive power. They were not then, nor at any point prior to the cancellation of their run, advised that they were reassigned to turnaround service. At Capreol they were cancelled and released from duty at 1930, with another crew being dispatched to operate Train 338 to Brent. It is not disputed that the crew subsequently assigned arrived in Brent at a point in time some eight and one-half hours from the time the grievors' crew commenced their tour of duty. There was, in the result, a substantial difference between that elapsed time and the eleven hours of on-duty time which would have entitled the grievors to book rest.

Is there, in these circumstances, any reason to conclude that the grievors were not available and entitled to their assignment within the contemplation of Article 27.2? I think not. The grievors were available, notwithstanding that their train was running late as a result of its power failure. Article 27.2 of the Collective Agreement speaks to the right of employees to make their regular assigned trip, notwithstanding delay, when they are available to do so. In the Arbitrator's view the grievors in the instant case fell squarely within the terms of that provision. While the Company may have been justified in considering a cancellation of their assignment if it had reasonable grounds to believe that its continuation could be jeopardized by their entitlement to book rest, that alternative is not made out as a reasonable likelihood on the facts of the case at hand. The Company knew, or reasonably should have known, that the grievors' crew could have been sent back to Hagarty with the additional motive power and could thereafter have proceeded to Brent without any substantial risk of their exceeding the time after which they would be entitled to book rest.

On the facts disclosed, therefore, the Arbitrator must conclude that the Company deprived the grievors of their right to their assignment under Article 27.2, and that the instant grievance must be allowed. The Company is directed to pay to the grievors the amount of their claim. The monies payable to the grievors must, however, be set off against the monies which were actually paid to them by way of their guarantee. They are entitled to be paid the difference

between the monies which they would have earned had there not been a violation of the Collective Agreement, and the compensation actually paid to them.

12 October 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR