

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2062

Heard at Montreal, Wednesday, 10 October 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claims made pursuant to paragraph 27.2 of Article 27 of Agreement 4.16 by Conductor J.C. Gaudaur of Capreol for loss of earnings on March 5, 1988.

JOINT STATEMENT OF ISSUE:

Conductor Gaudaur was regularly assigned to the East Pool at Capreol, Ontario. On March 5, 1988, he was called to operate Train 338 from Capreol to Brent, Ontario and commenced duty at 0045.

Problems were experienced with the trainline and, as a result, Train 338 was delayed at Capreol. At or around 0440, Conductor Gaudaur and crew were re-assigned to Train 214 which was also due to depart Capreol for Brent.

At 0520, Train 214 had not yet departed and Conductor Gaudaur and crew were then notified of the cancellation of their tour of duty.

In addition to the 100 miles paid for the cancelled tour of duty, Conductor Gaudaur submitted two claims pursuant to paragraph 27.2 of Article 27 of Agreement 4.16: the first for 175 miles representing the miles earned by the crew who subsequently operated Train 214 from Capreol to Brent; and the second 188 miles representing the miles earned by that crew on its return run from Brent to Capreol.

Subsequent to the disallowance of these two claims, the Union appealed the matter contending that, in accordance with Article 27, Conductor Gaudaur should have either been permitted to operate Train 214 or deadheaded to Brent.

The Company disagrees.

FOR THE UNION:

(SGD.) T. G. HODGES
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. DELGRECO
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. J. 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 material establishes that the grievor was on duty between 0045 until he was notified of the cancellation of his tour of duty at 0520. It appears that at that time the Trainmaster formed the opinion that the grievor and his crew might not make it to Brent prior to the expiry of eleven hours from the time they went on duty, which is to say that they might become entitled to book rest prior to the completion of their assignment, as contemplated under Article 51.4 of the Collective Agreement. In my view that opinion was not unreasonable, particularly given that the run to Brent involved a meet, which would occasion an indeterminate delay while awaiting clearance of another train. In the Arbitrator's view the facts of the instant case fall within the circumstances contemplated in **CROA 1317**. It was there held that the Company could cancel an assignment where there were reasonable grounds to believe that it could not be completed before such time as the train's crew became entitled to book rest. In arriving at that conclusion it appears to the Arbitrator, although the matter was not elaborately argued, that if the grievor had been assigned to operate Train 214 he and his crew would have been "on duty" within the meaning of Article 51.4 from the commencement of work at 0045.

For these reasons, and in light of the principles and jurisprudence reviewed in **CROA 2061**, the grievance must be dismissed.

12 October 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR