CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2318

Heard at Montreal, Thursday, 14 January 1993

concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Employee Paul Pitre missed a call as Conductor on train CL-253 and claims payment for a tour of duty on train CL-255.

JOINT STATEMENT OF ISSUE:

Brakeman Paul Pitre, a qualified conductor, missed a call as conductor for train CL-253. The Company removed his name from the list of brakemen and placed it after the name of the brakeman called in his place because of his missed call.

The Union claims that Mr. Pitre ought to have kept his place on the list of brakemen and called as the conductor on train CL-255 and that the Company is in violation of Preamble 4, and of paragraphs 6.04(a), 35.01 and 36.03.

The Company rejects the Union's grievance and claims that the procedure was followed because Mr. Pitre did not conform to paragraph 35.01 of the collective agreement.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. ARSENAULT	(SGD.) A. BELLIVEAU
GENERAL CHAIRMAN	MANAGER, EMPLOYEE RELATIONS

There appeared on behalf of the Company:

R. Monette	– Counsel, Montreal
A. Belliveau	– Manager, Employee Relations, Sept-Iles
R. Plourde	– Superintendent, Sept-Iles
R. Normand	– Chief Clerk, Sept-Iles

And on behalf of the Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairman, Sept-Iles
S. Bruckert	– Counsel, Montreal

[TRANSLATION]

AWARD OF THE ARBITRATOR

In this grievance the Union bears the burden of proof, to establish that the loss of the tour of duty by Mr. Pitre was a violation of the rules and provisions of the collective agreement. It is agreed that the collective agreement does not contain any article which deals directly with the consequences of a missed call. However, there is a well established practice, for more than twelve years, by which a brakeman who misses his call as a brakeman must await the return of his crew before being returned to the board.

The Union does not object to this practice, even though it is not articulated in the wording of the collective agreement. Its counsel claims, however, that the practice cannot apply to the particular circumstances of Mr. Pitre, a brakeman qualified as a conductor who misses a call as a replacement conductor, and not as a brakeman. The Arbitrator cannot accept the claim of the Union. It appears evident to me that in the context of a "pool", the principle implied by the practice is to ensure that employees are obliged to hold themselves available and respond regularly to calls. That assures, in part, that the service of the Company will not be interrupted and, on the other hand, that other employees will not be delayed from their proper turn. It seems undeniable to me that this principle applies equally if the assignment to which the employee is called is either as a conductor or as a brakeman. In the two instances the results are the same. Furthermore, the evidence of the Company, uncontradicted by that of the Union, convinces me that the exception pleaded in the instant case was never recognized in the past practice.

For these reasons the grievance must be dismissed.

January 15, 1993 **(Sgd.) MICHEL G. PICHER**
ARBITRATOR