CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 359

Heard at Montreal, Tuesday, May 9th, 1972

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim for payment of one hundred twenty-eight (128) miles by Brakeman H. Maltais for January 10, 1972.

JOINT STATEMENT OF ISSUE:

Brakeman Maltais returned from an authorized leave of absence and reported available to work at 13:15 hours January 10, 1972 displacing Brakeman Robichaud in assigned Way Freight service normally leaving Sept-Îles Monday and Thursday of each week. However Way Freight did not leave until Tuesday morning.

The Union contends that Brakeman Maltais should be paid 128 miles as per article 5.02 of the Collective Agreement.

The Union filed a grievance. The Company rejected the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. J. SIROIS	**(SGD.) P. L. MORIN**
GENERAL CHAIRMAN	**SUPERINTENDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

J. Bazin	– Counsel
P. L. Morin	– Superintendent, Labour Relations, Sept-Îles
F. LeBlanc	– Labour Relations Assistant
T. Leger	– Labour Relations Assistant, Sept-Îles
R. Morris	– Trainmaster, Sept-Îles
R. Copp	– Chief Clerk, Sept-Îles
R. Deschênes	– Chief Crew Dispatcher, Sept-Îles

And on behalf of the Union:

J. J. Sirois	– General Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

The grievor here claims the basic day guarantee under his way freight assignment, which was as a brakeman in way freight service on the Moisie Division, normally leaving Sept-Îles Mondays and Thursdays. The basic day guarantee was applicable Mondays, Tuesdays, Thursdays and Fridays. On the day in question; a Monday, the grievor reported available for work at 13:15 hours the train did not leave that day and the grievor claims the guarantee.

Article 5.02 of the collective agreement, which governs the matter, provides as follows:

> **5.02** Trainmen in assigned way freight or road switcher service shall be guaranteed not less than one hundred and twenty-eight (128) miles or eight (8) hours for each calendar working day (including legal holidays) they are available for service, exclusive of overtime.

The question to be determined is simply whether the grievor was "available for service" on the day in question, within the meaning of Article 5.02. If he was so available, then he is entitled to the payment guaranteed. The difficulty in construing the provision is that it does not indicate the extent to which an employee must hold himself available for service. It would seem clear that if an employee were "available" only for the last few moments of a day, he could scarcely be regarded as complying with the requirements of the article. On the other hand, to expect him to be available for the whole twenty-four hours of "each calendar working day" referred to in the article would be unreasonable.

In my view, it is reasonable availability having regard to the assignment which the article calls for. The evidence is that where it is required that employees be available on a particular "day", they comply with that requirement by booking in before noon on that day. Thus half a day or more counts as a day; less than half does not. This is not an unreasonable application of the requirement of the article, and, on the evidence, it has been the practice of the Company for some years, both with respect to daily guarantees such as that dealt with in Article 5.02, and "periodic" guarantees provided for elsewhere in the agreement.

Since the grievor did not report himself available for at least half the day in question, he was not regarded as being "available" on that day within the meaning of Article 5.02. In this, the Company applied the article in a reasonable way, consistent with its established practice. It may be concluded that the grievor has not brought himself within the provisions of the article.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR