CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2144

Heard at Montreal, Tuesday, 14 May 1991

concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer W. Sykes for not having been utilized on a yard extra engine for 1800 hours on June 21, 1990. Claimed under Article 3.7 of Agreement No. 8.

JOINT STATEMENT OF ISSUE:

On June 21, 1990, W. Sykes worked his regular assignment 0800 to 1600 hours and his name was registered for a sixth shift under Article 3.7(a).

An extra yard engine was required for 1800 hours on June 21, 1990. As the spareboard was exhausted, an Engine Service Brakeman was called for that extra.

The Brotherhood contends that W. Sykes was entitled to the extra engine.

The Company rejected the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) G. HALLÉ	(SGD.) P. A. DYMENT
GENERAL CHAIRMAN	PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule	– Manager, Labour Relations, North Bay
D. K. Hagar	– Superintendent, Train Operations, North Bay

And on behalf of the Brotherhood:

G. Hallé	– General Chairman, Quebec City

AWARD OF THE ARBITRATOR

The instant claim is made under Article 3.7 of the collective agreement. It provides as follows:

> **3.7** SPARE BOARD ENGINEERS NOT AVAILABLE
>
> Regularly assigned engineers will be permitted to work a sixth shift in their work week either between shifts or on an assigned rest day when there are no spare engineers available, provided the following conditions are fulfilled:
>
> **(a)** Engineers desiring such work will make application in writing to work a sixth shift in the work week.
>
> **(b)** The senior engineer so available will be called when such call will not interfere with him filling his regular assignment.

(c) An engineer who has indicated that he is available for such work will accept all calls until he cancels his application in writing.

(d) Engineers who fail to respond to calls will not again be called until they have indicated in writing that they are again available.

The material before the Arbitrator establishes, beyond controversy, that the spare board was fully depleted when an extra yard engine was required for a tour of duty at 1800 hours on June 21, 1990. It is also common ground that the grievor, Engineer W. Sykes, had registered in writing his desire to work a sixth shift.

The issue in dispute is relatively simple. The Company maintains that the phrase ". . . when there are no spare engineers available" found in Article 3.7 contemplates the unavailability of all persons qualified to work as engineers, including engine service brakemen. On that basis it maintains that it was entitled to call an engine service brakeman to operate the extra yard engine on the day in question. The Brotherhood, on the other hand, asserts that the right to call an engine service brakeman had not yet matured, and that the Company was under a prior obligation to assign a sixth shift to an engineer in yard service as contemplated under Article 3.7. It submits that that obligation is triggered when there are no longer any engineers available on the spare board, regardless of whether engine service brakemen are available.

In the Arbitrator's view the interpretation of Article 3.7 advanced by the Brotherhood must be preferred. Firstly, the purpose of the provision supports the conclusion which it argues. It does not appear disputed that the sixth shift opportunity was added into the collective agreement for the benefit of yard service engineers, in recognition of the fact that their earnings are generally more limited than those of engineers in road service. Given that fundamental intention, as well as the language of the provision itself, the Arbitrator cannot accept the suggestion of the Company's representative that the sixth shift is not a mandatory provision, but is rather directory and remains in the discretion of the Company. While the term "will" is used, it is clear from the context of the provision that an exchange of obligations was intended. An engineer who has signed on as being available for a sixth shift is under an obligation to accept calls, failing which he may be removed from the list, while the Company, on the other hand, is under an obligation to call the senior engineer available so long as to do so would not interfere with his or her regular assignment. Moreover, it is implicit in the decisions of this Office in **CROA 160** that the language of Article 3.7 is mandatory.

Secondly, the arbitral jurisprudence respecting canons of construction are supportive of the Brotherhood's approach. It is well established that headings found within a collective agreement may be referred to by arbitrators as a means of better understanding the intention of the parties in respect of a particular section which falls under them. (*See* ***Seaview Manor Corp.*** *(1986) 27 L.A.C. (3d) 50 [Outhouse];* ***Council of Printing Industries of Ontario*** *(1964), 15 L.A.C. 318 [Reville] and, see, generally Brown & Beatty,* ***Canadian Labour Arbitration****, third ed., 4–27.*)

Article 3.7 is headed "Spare Board Engineers Not Available". In the Arbitrator's view that heading provides a clear indication of the intention of the parties. It is common ground that engine service brakemen are not spare board engineers, until such time as the spare board is augmented to bring them within that class of service. In the instant case the engine service brakeman called to operate the extra yard engine on June 21, 1990 was not a spare board engineer, and indeed no spare board engineers were available. In those circumstances, having regard to the heading of Article 3.7, I am satisfied that the Company was under a first obligation to permit a regularly assigned engineer to work a sixth shift as contemplated by Article 3.7 of the collective agreement. It is not disputed that the grievor, Locomotive Engineer W. Sykes, was the senior engineer so available at the time in question. I am therefore satisfied that because there were no spare board engineers available the employer was under an obligation to offer a sixth shift assignment to Locomotive Engineer Sykes on June 21, 1990, and that in failing to do so it violated the provisions of Article 3.7 of the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the time claim submitted by Locomotive Engineer W. Sykes be paid forthwith.

17 May 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR