CANADlAN RAILWAY OFFICE OF ARBITRATION
CASE NO.567

Heard at Montreal, Wednesday, October 13, 1976
Concerning

CANADlAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF LOCOMOTlVE ENGlNEERS

DISPUTE:

Time claims for 100 miles at yard rates submitted by various Locomotive Engineers of Hamilton, Ontario, for not having been called as Pilot on April 9, 10 and 11, 1975.

JOINT STATEMENT OF ISSUE:

At various times between 9 and 11 April 1975, the Toronto, Hamilton and Buffalo Railway Company operated some of their crews over CN trackage when they had to reroute their transfer movements between two of their switching yards because the tunnel route they usually follow became impassable due to flooding.

Various CN Locomotive Engineers assigned to the spareboard at Hamilton submitted time claims for 100 miles at yard rates when CN did not use CN Locomotive Engineers to pilot the Toronto, Hamilton and Buffalo crews over CN trackage.

The Brotherhood claims that the claimants were entitled to be assigned as Pilot under Article 64 of the Collective Agreement.

The Company has declined the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) V. J. Downey Acting General Chairman	(Sgd.) S. T. Cooke Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

G. A. Carra	System Labour Relations Officer, C.N.R., Montreal
M. Austin	Trainmaster, C.N.R., Hamilton

And on Behalf of the Brotherhood:

J. B. Adair	General Chairman, B.L.E., St. Thomas, Ont.

AWARD OF THE ARBlTRATOR

Article 64 of the collective agreement provides as follows:

ARTICLE 64

PILOTING

64.1 Locomotive engineers acting as Pilots will be paid from the time required to report for duty until time of registering off duty on completion of trip or day's work at the rate of pay applicable to the class of power and under conditions pertaining to the class of service piloted, except that Articles dealing with preparatory time, change-off time, initial terminal time, final terminal time and inspection time shall not apply.

64.2 A locomotive engineer in charge of a locomotive over a subdivision with which he is not familiar, will be furnished with a locomotive engineer, if available, as pilot, in addition to engine crew.

The issue is whether that provision required the company to call the grievors, Engineers assigned to the spareboard, to work as pilots on the days in question. The unions contention is that article 64.2 obliges the company to assign a pilot in the circumstances, and that the engineers in question were entitled to have a pilot assigned.

In fact, it appears that yard foremen, not members of this bargaining unit, were assigned as pilots. The union contends that locomotive engineers (in the bargaining unit), if available, should have been so assigned.

It seems clear that both parties consider that in the circumstances it was proper to assign a pilot. Whether or not the company was required to assign an engineer to act as pilot is, however, a different question. Further, the question before me is not whether it would have been better, on safety and other grounds, to assign an engineer rather than a yard foreman; that is not a question I would have jurisdiction to decide. The question before me is whether the collective agreement imposes an obligation to assign an engineer.

Article 64.2 sets out that a locomotive engineer be furnished, in certain circumstances, with an engineer as pilot. This may be regarded as conferring on engineers the right to an engineer pilot in those circumstances, that is, where the engineer is in charge of a locomotive over a subdivision with which he is not familiar. Where article 64.2 refers, at the outset to "a locomotive engineer", I have no doubt that it refers to one covered by the collective agreement, that is, a member of the bargaining unit. Here, however, the engineers operating the trains in question were employees of another railroad, and not members of the bargaining unit. They had therefore no standing to call on the company to furnish pilots at all.

Article 64.2 might also be regarded, and this is, in a general way, the union's view, as requiring that where a pilot is appointed, he

shall be a locomotive engineer. Viewed this way, the provision might be regarded as preventing the performance of work by persons outside the bargaining unit. That is not, I think, a proper reading of article 64.2, which is more aptly interpreted as in the preceding paragraph. In any event, however, the provision can have application only with respect to "bargaining unit" work. Here, while the work performed was over the company's tracks, it did not involve the company's equipment, nor were its regular enginemen or crews involved.

For the foregoing reasons, it is my conclusion that article 64 had no application in the circumstances of this case. The grievance must therefore be dismissed.

J.F.W. WEATHERILL
ARBITRATOR