

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 943

Heard at Montreal, Tuesday, May 11, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Snow Plow Foreman Mr. Yvon Bilodeau for loss of wages as a result of not being assigned to assist the Work Equipment Operator in the operation of a Spreader on February 13, 14 and 15, 1981.

JOINT STATEMENT OF ISSUE:

On 13 February at 1630 hours the Company required a Spreader to be placed in service on the Murray Bay Subdivision. A Work Equipment Operator who was regularly assigned to the Spreader was placed in charge of its operation.

Mr. Daniel Cote was assigned to assist the Work Equipment Operator in the operation of the Spreader from 1630 hours on February 13 until 2400 hours on February 15, 1981 continuously, except for a 3-1/2 hour rest period.

The Union claims that Mr. Bilodeau should have been assigned to assist the Work Equipment Operator instead of Mr. Cote.

The Company declined the claim.

FOR THE EMPLOYEES:

(SGD.) PAUL A. LEGROS  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Director Labour  
Relations

There appeared on behalf of the Company:

T. D. Ferens	- System Labour Relations Officer, CNR, Montreal
K. J. Knox	- Manager Labour n=lations, CNR, Montreal
H. Leboeuf	- Employee Relations Officer, Engineering & Marketing, CNR, Montreal
G. Cournoyer	- Superintendent Works Equipment Shops, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
Roland Roy	- General Chairman, BMWE, Riviere-du-Loup
F. A. Stoppler	- Vice-President, BMWE, Ottawa

#### AWARD OF THE ARBITRATOR

The grievor, a Track Maintenance Foreman, was assigned as well as a spare Snow Plow Foreman. On the day in question, he was called to work as a Snow Plow Foreman on the Murray Bay Subdivision. He worked on that assignment from 0730 until released at 1630. The following day, he returned to his regular assignment of Track Maintenance Foreman. On the day in question the spreader went into service at Limoilou at 1630. That was the time at which the grievor was being released at Joffre some one-half hour's travelling time away.

Thus, the grievor was not in fact available for the work in question when it began. He was not available the following day, when he was performing his regular assignment. It may be that he would have been available for the 2.5 hours of work that was done on a third day. It may be noted that the grievor's claim exceeds the amount of work actually done.

The work, which was that of assisting a Work Equipment Operator in the operation of a spreader, was assigned to Mr. Cote, a Track Maintainer assigned as a Spare Snow Plow Helper. One of the Union's arguments appear to be that the grievor should have been assigned as operator of the spreader. That, however, is not the claim made by the grievance, as set out in the Dispute and Joint Statement of Issue. While such a claim appears to be without merit, I make no decision on that point since it is not in issue in this case.

The Union referred to Article 12.1, Article 12.2, and Understanding No. 5. Article 12.1 is as follows:

"12.1 Foremen and operators in charge of snow plows or spreaders in snow service will be paid the rate of Extra Gang Foreman 30 or more men."

That article has no application here, as the position in question was that of assisting the operator of a spreader, not of being in charge. In any event the article sets out the rate of pay, not the right to assignment, although it may be implicit in it that Foremen or Operators are to be in charge of the equipment referred to. In the instant case, an Equipment Operator was in charge of the spreader. That would seem right.

Article 12.2 is as follows:

"12.2 A trackman or track maintainer who actually assists a foreman in the operation of snow plow or flanger or when actually required to operate a spreader in snow service in conjunction with a snow plow, will be paid the rate Work Equipment Machine Operator Group II. This clause will also apply to a leading track maintainer who is not required at that time to relieve the foreman on his section. His track maintainer seniority will apply."

This clause would affect the entitlement of Mr. Cote, perhaps, but it simply does not apply to the grievor, who was not a trackman or track maintainer, would not have been assisting a foreman and would not

actually have been required to operate the spreader (although given the length of the assignment, he would no doubt have been required to operate it at times). The real effect of this clause for the instant case is that it presumes that trackmen or track maintainers would be assigned in such circumstances.

Understanding No. 5 is as follows:

"No. 5 - Section 12.2

Question: Should regular Sectionmen in order of seniority have preference for the purpose of assisting Snow Plow Foreman in the operation of a snow plow?

Answer: Yes, if qualified."

Here, of course, it was not a matter of assisting a Snow Plow Foreman in the operation of a snow plow, but of assisting an Equipment Operator in the operation of a spreader. Assuming that the situations are analogous, the understanding is that regular sectionmen are to have preference. That surely supports the assignment of Mr. Cote to the work.

Thus, both as a matter of availability, and as a matter of entitlement under the Collective Agreement, the grievor's claim is without merit.

The Company argued that as earlier grievances raising the same issue had not been proceeded with, the Union was estopped from processing this case. I do not agree with that contention, which, I think, confuses grievances with the issues raised in them. This matter was, in my view, arbitrable.

For the reasons set out above, the grievance is dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.