

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1090

Heard at Montreal, Wednesday, May 11th, 1983
Concerning

CANADIAN NATIONAL RAILWAYS
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The Brotherhood's claim that Locomotive Engineers have work entitlement to operate the Speno Rail Grinding Machine RMS No. 1, pursuant to the provisions of Agreement 1.1.

JOINT STATEMENT OF ISSUE:

Commencing on or about April 1, 1983, a Speno Rail Grinding Machine RMS No. 1 Operated on CN Rail trackage.

The Brotherhood claims that pursuant to the provisions of Agreement 1.1 and existing jurisprudence, a Locomotive Engineer should be employed in the operation of the Speno Rail Grinding Machine RMS No. 1.

The Company declined the claim.

FOR THE EMPLOYEES:

(SGD.) JOHN B. ADAIR
FOR: General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- Manager Labour Relations, CNR, Montreal
M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
W. Hansen	- Senior Communication Analyst, Operations, CNR, Montreal
A. Pronovost	- System Engineer Track, Programming, CNR, Montreal
W. Rupert	- Manager Rules, Chief of Transportation, CNR, Montreal
J. A. Sebesta	- Co-ordinator Transportation - Special Projects, CNR, Montreal
G. Blundell	- System Labour Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

John B. Adair	- Vice-President, BLE, Ottawa
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P. M. Mandziak - General Chairman, BLE, St. Thomas
J. P. Riccucci - Special Representative, BLE, Montreal

AWARD OF THE ARBITRATOR

The Speno Rail Grinding Machine is a complex piece of equipment whose sole function is rail grinding. It consists of some ten articulated units, not easily separated. To the untrained eye, it certainly looks like a train, and its two power units, one at each end, certainly look like locomotives. For some purposes and in some contexts, it may be quite proper to refer to this equipment as a "train" and to its power units as "locomotives". Despite its size and complexity, however, this equipment is, at least when used for the purpose for which it was intended, rail grinding, constitutes one machine, and all of its constituent parts play a role in the achievement of that purpose. This is true even of the power units, whose role is not only to provide motive power, but also to control the rail grinding operation itself. The operators, located in the power units, control not only the motion of the equipment as a whole, but the functioning of the grinding equipment as well. The whole "train" does in fact function as one complex piece of machinery. Upon consideration, I am satisfied that this equipment, when in service for the purpose for which it is designed, does in fact constitute one unit of self-propelled machinery, in that it is not moved by independent motive power, but by a power source integrated with and part of the grinding machine itself.

The Company in this case has contracted with the Speno Rail Services Company for the supply and operation of this equipment. The crew of six are, it would appear, employees of Speno. The crew, which lives aboard the equipment, includes two Control Operators. These persons, as I have indicated, control the movement of the equipment along the track, and also play an essential role in the rail grinding operation itself. The issue in this case is whether or not it is a violation of the Collective Agreement for the Company to permit this. Put another way, the issue may be said to be whether or not locomotive engineers are entitled to claim the work, pursuant to the Collective Agreement.

While there is no specific provision to that effect in the Collective Agreement, I think it is implicit therein that, as a general matter, where the Company carries out locomotive operations on its tracks it is to do so, subject to any specific provision that may affect the matter, by assigning the work of locomotive operations to its locomotive engineers. In the instant case, the issue was not presented as one of improper "contracting out". The question was rather put in terms of whether or not the operation of the power units of the Speno Rail Grinding Machines was the proper work of a locomotive engineer covered by the Collective Agreement.

The work of the Control Operator of the Speno Rail Grinding Machine is of course related to the work of a locomotive engineer, in that each controls the motion of the equipment over the track. The question of the competence and qualifications of the Speno Control Operators is not a question in issue before me. They, of course, are not covered by the Collective Agreement. As to the locomotive

engineers, they would no doubt be capable of learning the work of a rail-grinding Control Operator, but that again is not the question. The question is whether locomotive engineers, as such, are to be assigned to the operation of the motive controls of this equipment.

This question, I have stressed, is to be answered having regard to the provisions of the Collective Agreement. While that agreement may confer on members of the bargaining unit rights to work as locomotive engineers, it does not require their assignment as Control Operators of rail grinding equipment. It is acknowledged that locomotive engineers do not operate the Sperry Grinding Cars which the Company has used. Similarly, a self-propelled crane is not an "engine", for which a locomotive engineer would necessarily be required. The equipment involved in the instant case is of a much more complex nature than a Sperry car or a self-propelled crane. As I have said, it looks like a train, and at first blush, one might assume that a locomotive engineer would be required for its operation. If, in some unusual circumstance, the equipment were to be used for some purpose other than rail grinding; if for instance it were to be used as motive power for separate cars, then it would be, to use the language of Case No. 470, "used as a locomotive in every sense" and it would be my view that a locomotive engineer should be assigned to such operation, although that question does not arise here, and I do not decide it.

It may be added that the operation of this equipment by persons other than locomotive engineers is not a matter which undermines the bargaining unit. Locomotive engineers, as such, do not operate rail grinding machines. The Speno Rail Grinding Machine (which includes its own motive power), is not used as motive power for trains, and its use is not a substitute for the use of train engines.

For the foregoing reasons, it is my conclusion that the Collective Agreement does not entitle locomotive engineers to operate the Speno Rail Grinding Machine. The grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.