

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1512

Heard at Montreal, Tuesday, May 13, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer W. C. Milligan, Belleville, for payment of 100 miles at road switcher rate, 17 February 1985 submitted under Article 26.3 of Agreement 1.1.

JOINT STATEMENT OF ISSUE:

On 17 February 1985, Mr. W. C. Milligan was employed as Locomotive Engineer on Plow Extra 4377 operating Belleville to Belleville via Picton. On the return movement from Picton, caboose CN 79459 was lifted at Trenton for movement to Belleville.

In addition to the earnings for this tour of duty, Locomotive Engineer W. C. Milligan claimed 100 miles at road switcher rate pursuant to Article 26.3 of Agreement 1.1.

The Company declined payment of the claim for 100 miles at roadswitcher rates.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
S. L. Pound	- System Transportation Officer, CNR, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak	- General Chairman, BLE, St. Thomas
H. Schamerhorn	- Local Chairman, BLE, Belleville

AWARD OF THE ARBITRATOR

As the trade union argued, I am satisfied that when the company requested the grievor to perform the "switching" duties described in

the Joint Statement of Issue he was still engaged in "snow plow service". As a result, since the company could not bring the grievor's circumstance within the exception of Article 26.3 of Agreement 1.1 it must be found to have violated that provision. Article 26.3 reads as follows:

"26.3 Locomotive engineers coming in from snow plow trip will not be required to do any switching at terminals, except to put their own train away if no yard locomotive is immediately available. At points enroute locomotive engineers will not do any switching except when necessary to move cars in order to plow out a track or tracks."
(Emphasis added)

The company relied upon Article 61.1 of the collective agreement in support of the notion that there is nothing unusual about Locomotive Engineers performing "combined services" during the course of a run. Accordingly, the fact that the grievor performed both snow plow service and switching duties (which he would normally do while on regular service) should not be seen as operating to the employer's prejudice. Article 61.1 reads as follows:

"61.1 Locomotive engineers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed; the overtime basis for the rate paid will apply for the entire trip."

I am of the view that Article 61.1 applies, as the language indicates, to the performance during the course of a run of different classes of road service. The grievor, in my view, was engaged in snow plow service during the course of his tour of duty. While performing that service the company was governed by the prohibition contained in Article 26.3. And, that prohibition allowed for only one exception that would otherwise permit the grievor to perform switching duties. In that context I have concluded that the provisions of Article 61.1 must be interpreted in a manner that is subservient to the particular circumstance delineated under Article 26.3.

In having regard to the foregoing, a direction shall issue ordering the company, in future, to comply in appropriate circumstances, to the provisions of Article 26.3 of Agreement 1.1.

I shall remain seized for the purposes of implementation, if necessary.

DAVID H. KATES
ARBITRATOR.