

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1565

Heard at Montreal, Wednesday, October 15, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Claim on behalf of several employees at Belleville, Ontario, for payment under Article 36 while attending Dangerous Commodity Instruction.

JOINT STATEMENT OF ISSUE:

As a result of changes to the "Dangerous Commodity Handling Regulations" which were effective 1 July 1985, all employees working as Assistant Chief Train Dispatcher, Train Dispatcher and Operator at Belleville, Ontario were advised that an instruction class consisting of a 30-minute review of the dangerous commodities section of the current operating timetable would be held.

The classes were scheduled on May 29 and 30 and June 3 for the different groups of employees continuous with the completion of their regular hours of work.

All employees were paid 30 minutes at one and one-half times their respective pro rata rate in accordance with Article 13 of Agreement 7.1.

The Union contends that the employees should have been paid in accordance with Article 36.2 of Agreement 7.1.

The Company disagrees and has declined the Union's request.

FOR THE UNION:

(SGD.) PETER TAVES
System Chairman

FOR THE COMPANY:

(SGD.) JUNE PATRICIA GREEN
FOR: Assistant
Vice-President
Labour Relations.

There appeared on behalf of the Company:

D. Lord - System Labour Relations Officer, CNR, Montreal
T. Wilson - Assistant Manager - Rules, CNR, Montreal

And on behalf of the Union:

Peter Taves - System General Chairman, RCTC, Winnipeg
J. R. Leclerc - System Vice-General Chairman, RCTC, Montreal

G. V. Nadon - Local Chairman, RCTC, Hornepayne
D. Dougherty - Local Chairman, RCTC, Belleville

AWARD OF THE ARBITRATOR

It is common ground that on January 17, 1985 the Governor General in Council gave Royal Assent to P.C. 1985-147 amending the Regulations to the Transportation of Dangerous Goods Act. To comply with the amended Regulations the Company was required to arrange instruction classes for employees affected by them.

The evidence establishes that the Regulations in question are not part of the Uniform Code of Operating Rules, which is a separate body of rules applying to the movement of trains, being regulations promulgated by the Canadian Transport Commission since 1976, having originated as regulations prescribed by the Board of Transport Commissioners by General Order #873, dated November 15, 1961.

It is also common ground that the Regulations to the Transportation of Dangerous Goods Act are contained within the Company's Operating Timetable. To date no examination on the Regulations has been held, and it does not appear that the provisions in question were taught to the employees by qualified Rules Instructors, who must be utilized for teaching classes on the Uniform Code of Operating Rules. It is not disputed however, that in due course employees will be required to pass examinations on the amended Dangerous Goods Regulations. The material also establishes that the employees who took the course in question had this fact noted on the back of their Rules Certificate Cards. The latter document attests on its face the successful completion by the employee of one of a number of grades of books on the Uniform Code of Operating Rules. The reverse side, entitled "Special Qualifications" provides space for the notation of special courses completed by the employee.

The Union's claim is based on Article 36.2 of the Collective Agreement which provides:

"36.2 When an employee is required by the Company to take a periodic examination in the Uniform Code of Operating Rules, and/or is directed to attend Rule Classes, during his off-duty hours, he will be compensated for the time involved on the following basis:

(i) Dispatchers, Train Movement Directors, and employees required to take "A" Book examinations will receive four (4) hours' pay at punitive rates.

(ii) Employees required to take examinations on other than "A" Book will receive two (2) hours' pay at punitive rates.

The above will not apply to employees directed to attend Rule Classes as a disciplinary measure, nor will employees be paid for taking rule examinations which they fail to pass to the satisfaction of the Rule Examiner."

The feeling on the part of the employees and their Union which motivates this grievance is readily understandable. Study and

knowledge of the Transportation of Dangerous Goods Regulations is no less essential for employees than is the study of the Uniform Code of Operating Rules. As true as that may be, however, Article 36,2 of the Collective Agreement clearly addresses only the latter circumstance. The language of the Article must be interpreted within its context. Speaking as it does to periodic examination of the Uniform Code of Operating Rules, with reference to "A" Book examinations and examinations other than "A" Book, it would in the Arbitrator's view torture the plain meaning of the Article to interpret the phrase "Rule Classes" as classes other than those relating to the Uniform Code of Operating Rules. To so construe the provision would be to amend the Collective Agreement, a power which this Arbitrator does not have. Whether classes in the Transportation of Dangerous Goods Regulations, or similar statutory directives should be given the same treatment as those respecting the Uniform Code of Operating Rules for purposes of overtime is a matter for bargaining between the parties.

For these reasons the Arbitrator must conclude that the treatment of the employees at Belleville by the Company was not in violation of the Collective Agreement. The grievance must therefore be dismissed.

MICHEL G. PICHER,
ARBITRATOR.