

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1569

Heard at Montreal, Thursday, October 16, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Violation of Agreement 10.3, Appendix A, Paragraph 9 of the Collective Agreement.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that the Company is in violation of Agreement 10.3, Appendix A, Paragraph 9 by the classification of an International Front-End Payloader, Model 515B, in the Group II Machine Category. The Union contends that this machine should be classified as a Group I Machine, as per Appendix A, Group I Operator, paragraph 91: "Rubber tired front end loader 2-1/2 cu. yds. and over, Rubber tired front end loader of Loader 2-1/2 cu yds. capacity or over including snow blower and snow buckets of varying sizes such as Michigan, A.C., Hough, Trojan, etc.".

The Company contends that the grievance is not arbitrable.

The Brotherhood disagrees with the Company's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General Chairman

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
J. Russell	- Labour Relations Officer, CNR, Montreal
S. F. Mills	- System Manager Work Equipment, CNR, Montreal

And on behalf of the Brotherhood:

G. Schneider	- System Federation General Chairman, BMWE, Winnipeg
T. J. Jasson	- Federation General Chairman, BMWE, Winnipeg

AWARD OF THE ARBITRATOR

The material establishes that by letter dated January 1979, now Appendix "C" of the Collective Agreement, the parties agreed to the

procedures pertinent to the evaluation and classification of work equipment machines. This is an issue of obvious importance to the Union, as the rates of wages of Operators depend directly on the classification of the work equipment which they are assigned. It appears that seniority lists depend, in turn, on the Operator's classification within any one of the four groups established. Appendix "A" to Collective Agreement 10.3 between the parties provides a general description of the four groups, including the special group, Group I, Group II and Group III, with examples for each type of equipment.

It does not appear to be disputed in the instant case that the ultimate decision in the Classification of equipment rests with the Company, through its Work Equipment Review Committee. Appendix "C" of Collective Agreement 10.3 requires that the Union be advised in advance of any evaluation or reevaluation of equipment by the Committee, and be given an opportunity to make a presentation to the Committee respecting the views of the Brotherhood as to the ratings appropriate to the equipment. Should the decision of the Committee differ from the position advanced by the Union, a further meeting is to be held at which time the Committee must explain the reasons for its decision. Under the Appendix the Company is also required to advise the System Federation General Chairmen when any new type of work equipment machine is introduced.

The material establishes that in this case, at a meeting held in Montreal on March 14th and 15th, 1979, the System Federation General Chairmen, including those from the Prairie Region, attended a meeting of the Work Equipment Review Committee, convened at the Brotherhood request. During that meeting the Union's proposals for considering upgrading the classification of a number of pieces of equipment, including wheeled loaders, was fully considered. As the Minutes of the Meeting indicate, a list of the twelve factors on which the Committee based its evaluations was distributed to the representatives of the Brotherhood.

With regard to the provisions of Appendix "C", and to the fact that equipment of the same type as the International Front End Payloader, Model 515B, was introduced into the Equipment Department as long ago as 1965, the Arbitrator has some difficulty sustaining the Union's grievance. The reclassifications in Appendix "C" are national and not regional in their application. For that reason notice is provided to all Regional Chairmen. In this case the material does not disclose any failure on the part of the Company to abide by the procedures of the Appendix. For these reasons the grievance cannot succeed.

Nothing in this Award should be construed as limiting such right as the Union may have to request the Work Equipment Review Committee to undertake a fresh review of the classification of the Wheeled Loader in question or any other similar equipment. Given the passage of time, and the turnover of personnel, such a procedure might be in the best interest of both parties to the extent that the Union's concerns may be fully aired and the Company be given an opportunity to clarify for the Brotherhood the criteria for equipment classification which it applies.

For these reasons the grievance must be dismissed.

MICHEL G. PICHER,
ARBITRATOR.