

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1684

Heard at Montreal, Wednesday, September 9, 1987

Concerning

CANADIAN NATIONAL RAILWAYS

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim on behalf of various Montreal Locomotive Engineers for 100 miles at yard rates of pay.

JOINT STATEMENT OF ISSUE:

On various dates in 1986, the grievors, as part of their yard service tour of duty, were required to complete the yarding of certain trains upon arrival at Taschereau Yard.

The Brotherhood contends that the employees are entitled to payment of 100 miles at yard rates of pay in accordance with Article 46A-1 of Agreement 1.1.

The Company declined the claims.

FOR THE BROTHERHOOD:

(SGD.) P.M. MANDZIAK
General Chairman

FOR THE COMPANY:

(SGD.) D.C. FRALEIGH
Assistant Vice-President

There appeared on behalf of the Company:

C. St. Cyr	- System Labour Relations Officer, Montreal
D.W. Coughlin	- System Manager Labour Relations, Montreal
J. Pasteris	- System Labour Relations Officer, Montreal
M. Montiguy	- Regional Labour Relations Officer, Montreal
J. Latour	- Regional Operations Control Officer, Montreal

And on behalf of the Brotherhood:

P.M. Mandziak	- General Chairman, BLE, ST. Thomas
P. Seagris	- Observer, General Chairman, Winnipeg
G. Hall	- Observer, General Chairman, Quebec

C. Hamilton - Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material establishes that the flying crew concept, by which yard service engineers might be assigned to any of several locomotives during particular tour of duty, has been in effect since at least 1983. When the practice was introduced the Union chose, by a grievance in CROA 1167 to alleged a material change in working conditions, invoking the protection of Article 114.1(b) of the Collective Agreement. It did not succeed in that grievance, and until the filing of the instant claim, appears to have accepted the Company's practice.

In support of this claim the Union cites Article 46A-1 of Agreement 1.1 which provides as follows:

Locomotive Engineers in yard and transfer service may be used temporarily in any service in the terminal in case of necessity when their locomotive is required to work in other service or part of the terminal.

In the Arbitrator's view the provision relied upon by the Union does not support its claim. The language of the Article plainly describes one circumstance in which Engineers in yard service may be transferred from one locomotive to another. It does not, however, purport to be exhaustive. Significantly, there is no other language in the Collective Agreement to support the view that Engineers in yard service cannot be assigned to more than one locomotive on a given tour of duty. Indeed the practice involving such assignments was endorsed by a decision of this office in CROA 1167. There is, moreover, no provision in the Collective Agreement for the payment of any mileage at yard rates of pay attaching to Article 46A-1. Most significantly, the concept that an engineer is to be assigned to a particular locomotive, which did exist in older collective agreements, dating back to the early years of this century, is no longer reflected in the language and scheme of the current collective agreement.

The motive for this grievance is readily understandable. It appears that with the expansion of the flying crew concept yard engineers are required to move from locomotive to locomotive, taking with them their own personal effects, sometimes across substantial distances in dark and uncomfortable field conditions. For the reasons noted, there is no provision in the Collective Agreement dealing with this problem. In the Arbitrator's view this is an issue to be addressed either at the bargaining table or in arbitration proceedings dealing with the renewal of the parties' Collective Agreement. For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR