

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1821

Heard at Montreal, Tuesday, 13 September 1988

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of Article 40.01.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company is violating the terms of Article 40.01 in not assigning a conductor when an automotive crane is used on the main track outside of yard limits under dispatcher's orders.

The Company contends that Article 40.01 is not applicable in the instant case.

FOR THE UNION:

(SGD) B. ARSENAULT
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) A. BELLIVEAU
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	- Counsel, Montreal
A. Belliveau	- Director, Human Resources, Sept-Iles
J.Y. Nadeau	- Superintendent, Transportation, Sept-Iles
K. Turiff	- Superintendent, Maintenance of Equipment, Sept-Iles
P. Caouette	- Counsel (Observer), Montreal

And on behalf of the Union:

R. Cleary	- Counsel, Montreal
B. Arsenault	- General Chairperson, Sept-Iles

AWARD OF THE ARBITRATOR

The question to be decided is whether the rail crane or rail changer is a self-propelled crane within the meaning of Article 40.01 of the Collective Agreement. That article reads as follows:

40.01 When locomotive cranes are required to work on main track outside yard limits, under dispatcher's orders or clearance Form 'C', a conductor will be placed in charge. A brakeman will be provided in addition when such locomotive cranes are required to handle more than five (5) cars, exclusive of van. Van shall be provided or any other appropriate facilities.

The parties are agreed that the Company maintains a number of self-propelled cranes, that is to say cranes which have the capacity to travel along the rail. The heaviest of these machines are able to accomplish a number of tasks, among others the clearing of a derailment or the moving of locomotives, rail cars and heavy equipment and material. Certain of these heaviest self-propelled cranes are able to couple onto, and pull, one or more rail cars. Amongst these latter are the Brown Hoist, the Auxiliary Crane and the Burro Crane.

At first the Rail Changer was a self-propelled rail car used in the transportation of rail to and at a track repair work-site. In 1975 this machine was, for the first time, equipped with a hydraulic crane. From this time the rail was loaded and unloaded by the use of this crane, rather than manually. The Union contends that the Rail Changer has thus become a locomotive crane within the meaning of Article 40.01 and as such that its movement outside yard limits requires the assignment of a conductor. Counsel for the Company maintains that the parties never intended to include the Rail Changer in the category of the 'locomotive crane' for the purposes of Article 40.01 of the Collective Agreement.

The primary obligation of a board of arbitration is to give to the words used in a collective agreement their normal meaning, except when the context of the document or the evidence suggests a less evident interpretation. At first, the position of the Union has a certain attraction. The Rail Changer has three principal parts; a cabin which serves both as a locomotive cab when travelling along the track and as a control booth when operating the crane, a hydraulic crane, and a long section which resembles a flat car which contains the lengths of rail. In a certain sense the Rail Changer could be seen as a self-propelled crane. In the Arbitrator's view, however, such a conclusion is not sustainable.

The evidence, composed of photographs, and the history of the Rail Changer supports the conclusion that this machine is not essentially a crane. The Rail Changer is a vehicle whose primary function is the delivery of lengths of rail, whether in the field where the track repairs occur, or for storage or other purposes. The hydraulic crane mounted on the Rail Changer is a piece of its equipment which facilitates the task of loading and unloading the rails, and without doubt its placement whether for the purpose of track repair or storage. In this sense this vehicle can be compared with a truck which transports brick or cement blocks at a construction site, and which is equipped with a hydraulic crane to help in loading and unloading. The Rail Changer belongs more naturally in the family of such a truck than in that of a construction crane, whose principal task is not the transporting but only the lifting of heavy objects or materials as required.

This interpretation seems, furthermore, to be in accord with the practice of the parties, here concerned with the interpretation of Article 40.01 of the Collective Agreement. The evidence establishes that in 1975, upon the introduction of a rail changer equipped with a crane, the Union filed a grievance which expressed the same position as the instant grievance. For unexplained reasons that grievance of 1975 was ultimately withdrawn. During more than ten years, a period in which there were many revisions to the Collective Agreement, The Union did not object to the position of the Company which treated the Rail Changer as if excluded from the application of Article 40.01. In light of these facts, the Arbitrator must conclude that the parties are effectively agreed that the terms of Article 40.01 do not apply to the Rail Changer, and that this piece of maintenance equipment is not a locomotive crane within the meaning of the article.

For these reasons the grievance must be dismissed.

September 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR