

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2016

Heard at Montreal, Wednesday, 11 April 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer B.G. Schultz of Kamloops, B.C. for loss of earnings January 2, 1986.

JOINT STATEMENT OF ISSUE:

On January 2, 1986, spare Locomotive Engineer T.B. Olsson was called for a vacancy in the Kamloops East Pool for 1400 to operate Train 758 from mileage 0.7 on the Ashcroft Subdivision to Blue River, B.C., via the Clearwater Subdivision.

Subsequently, Locomotive Engineer B.G. Schultz was assigned to Kamloops West Pool, and who had also been called for 1400 for Train 403, submitted a claim alleging he should have been called to operate Train 758 from mileage 0.7 on the Ashcroft Subdivision to the Kamloops Yard under Article 32.1 of Agreement 1.2.

The Brotherhood contends that Locomotive Engineers assigned to the Kamloops West Pool have exclusive entitlement to such work on the Ashcroft Subdivision.

The Company declined payment of the claim.

FOR THE BROTHERHOOD:

(SGD) D. S. KIPP
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) M. DELGRECO
for: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

R. Paquette	-- Labour Relations Officer, Montreal
P. J. Morrisey	-- Manager, Labour Relations, Montreal
L. Harms	-- Labour Relations Officer, Montreal
M. Fisher	-- Co-Ordinator, Transportation, Montreal

And on behalf of the Brotherhood:

D.S. Kipp -- General Chairman, Vancouver

AWARD OF THE ARBITRATOR

The claim Locomotive Engineer Schultz depends on the application of Article 32.1 of the Collective Agreement which provides as follows:

32.1 Locomotive engineers in pool service will be run first-in, first-out from the shop track or change-off point on their respective subdivisions, except as hereinafter provided.

The thrust of the Brotherhood's claim is that Locomotive Engineer Olsson was required to proceed westward past the outer switch of the Kamloops terminal on a portion of the Ashcroft Subdivision in order to marshal his train for its ultimate movement eastward through the terminal and across the Clearwater Subdivision. It is common ground that at all times the movement of Engineer Olsson's train was within the switching limits of the Kamloops Yard.

In the Arbitrator's view there is nothing in the language of Article 32.1 which expressly or impliedly limits the ability of the Company to assign an employee in the position of Locomotive Engineer Olsson to proceed onto the Ashcroft Subdivision, beyond the outer switch, to couple his locomotive to his train for furtherance eastward back through the terminal and onto the Clearwater Subdivision, when the movement assigned was clearly in relation to his assigned run to Blue River over the Clearwater Subdivision.

In the instant case the cars which were lifted by Mr. Olsson had been admittedly left just outside the outer switch of the Kamloops Yard by the incoming crew because of a lack of space in the yard. In the Arbitrator's view what transpired cannot fairly be characterized as a "short run" within the meaning of Article 9 of the Collective Agreement. While the existence of a short run may be a matter of fact and degree to be determined in each case, I cannot find in the facts before me that what transpired was the assignment of a short run over the road on the Ashcroft Subdivision. Specifically, the Brotherhood's representative has pointed to no part of the Collective Agreement which sustains his position that any movement past the outer switch must qualify as a short run. Nor am I prepared to find that Article 32.1 reflects an intention that engineers in pool service at a same home terminal have an exclusive and proprietary right to any movement across different subdivisions within the same terminal.

The Brotherhood's position is admittedly based on its assertion that any movement outside the westerly outer switch of the Kamloops Terminal constitutes a road movement. That position, however, is not sustained by the jurisprudence of this Office. Similar questions fell to be considered in CROA 194 and CROA 479. In the latter case, which involved the competing claims of locomotive engineers from different home terminals, the Arbitrator made the following observation:

The meaning of "terminal" however, is not clearly defined in the collective agreement, at least, not for the purpose of determining the area within which and initial final terminal switching may be performed. Reference to the outer main track switch is made in Article 11(e) for the purposes of determining precise road miles in any trip. The outer main track switch, however, does not necessarily indicate the boundary of a "terminal". For the purpose of initial or

final terminal switching, the yard switching limits would appear to be the appropriate limits for such work. ...

emphasis added

In the Arbitrator's view the foregoing passage would indicate that movements within yard switching limits must, as a general matter, be viewed as movements within a terminal. That also appears to have been the approach taken in CROA 194. Similarly, it was found in CROA 1081 that the passing of an outer main track switch does not automatically transform a movement into a road trip and, as the Arbitrator noted "... nor does it necessarily mean that a crew moving way from a point over an outer main track switch has left the "terminal"." It was there found that crew which had moved east of the main track switch at Havelock were still within the limits of Havelock Yard and could not, therefore, be considered to have gone on a new over-the-road trip.

In the Arbitrator's view the foregoing authorities do not sustain the position of the Brotherhood in the instant case. Quite apart from the position of the Company, to the effect that it could freely assign employees from either pool at the same home terminal, a matter upon which I make no comment, there is no basis for sustaining the position of the Brotherhood. It must be concluded that the movement of Engineer Olsson's train was at all times within the terminal and, to that extent, in relation to his assigned run on the Clearwater Subdivision, and not a road trip over any part of the Ashcroft Subdivision.

For these reasons the grievance must be dismissed.

April 12, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR