TRANSLATION

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2217
Heard at Montreal, Wednesday, 11 December 1991
concerning
QUEBEC NORTH SHORE & LABRADOR RAILWAY
and
UNITED TRANSPORTATION UNION
DISPUTE:
Method of payment - Training.
JOINT STATEMENT OF ISSUE:
The Union argues that the Company has violated the Collective Agreement, as well as Letter of Understanding No. 33, Preamble 1, Articles 60.01a), 8.01a), 11.01, 16.01a), 36.01, 36.02, 36.03 and 36.07 when employees attended the training course in order to qualify as required by the Law
The Company rejected the grievance, claiming it had not violated the Collective Agreement and had conformed with Letter of Understanding No. 11.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) B. ARSENAULT
(SGD.) A. BELLIVEAU
GENERAL CHAIRPERSON
MANAGER, HUMAN RESOURCES
There appeared on behalf of the Company:
D. Manzo
Counsel, Montreal
A. Belliveau
Manager, Human Resources, Sept Iles
K. D. Turriff
Superintendent, Special Projects, Sept Iles
D. M. Thomas
Trainmaster, Sept Iles
And on behalf of the Union:
R. Cleary
Counsel, Montreal
B. Arsenault
General Chairperson, Sept Iles

AWARD OF THE ARBITRATOR

The Arbitrator cannot accept the Union's claim to the effect that the Company violated the terms of Letter of Understanding No. 33. By that letter, the parties agreed that it was essential that employees take the training course in order for them to meet the requirements of the job. To that end, they were committed to meet within the six months following the signing of the agreement in order to agree upon a procedure by which the employees would attend the training course. The evidence reveals that, following that, the parties held irreconcilable positions. The Union maintained that the employees must not be subjected to any loss of work opportunities, or receive equivalent compensation, while on the course.

Although agreement was desirable according to the terms of the Letter of Understanding, it was not obligatory. The evidence reveals that the parties met again in November 1990, and that the Union categorically rejected the proposal of the Company. Due to the urgency in training its employees in the requirements of the new Canadian Rail Operating Rules, the Railway found itself obliged to immediately put into effect a training course. In the circumstances, in the Arbitrator's view, there was no derogation of the terms of the Letter of Understanding.

The Collective Agreement contains no article which deals in an explicit fashion with the obligation of the Company concerning the remuneration of employees who are required to take a training course. However, it is not disputed that, for a large number of years, the practice has been to pay the employee who is taking an obligatory training course for a basic day, and this was done in this case. Furthermore, the Arbitrator must conclude, based on the preponderance of the evidence, that the employees in question all had the option of taking the course on their rest days. In the absence of any precise evidence, I cannot accept the claim of the Union to the effect that the employees were assigned without option and were as well forced to take their training during their work days. On the contrary, the letter from the Company Superintendent dated November 19, explained to the employees that they could present themselves for the training course ``... during their rest days if they so desired.'' [translation] That option, which is the norm in the industry, (see CROA 2176) effectively gave to the employees the right to take the training course without any loss of work opportunities.

On the whole, the Arbitrator must conclude that the terms of the agreement, and the rights of the employees to their tours of duty, were respected by the procedure adopted by the Company. For these reasons the grievance is dismissed.

December 13, 1991

MICHEL G. PICHER

ARBITRATOR