

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2222

Heard at Montreal, Tuesday, 14 January 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The bulletining of Frog Truck and Switch Truck Operator positions in the Machine Operator Group I classification of Agreement 10.3 rather than in the Special Group classification of that Agreement.

JOINT STATEMENT OF ISSUE:

The Brotherhood initiated an appeal following the issuance of Bulletin W/E 26/89 by the Company in November of 1989. This bulletin, which closed effective November 30, 1989, advertised various Frog and Switch Truck Operator positions in the Group I classification of Machine Operator under Supplemental Agreement 10.3. In the course of the grievance procedure, the grievance was amended to become a policy grievance to cover all bulletins subsequent to W/E 26/89 advertising such positions in the Group I classification.

The Brotherhood has contended that the Company is estopped from advertising those positions in the Group I classification since it has previously advertised them in the Special Group classification. Further, the Brotherhood has contended that the Work Equipment Review Committee, which reclassified this equipment into the Group I category, does not have the authority to amend the collective agreement, and that Appendix 'A' of Agreement 10.3 clearly indicates the vehicles in question fall within the Special Group category. Finally, the Brotherhood has alleged that the Company has contravened Articles 2 and 3 of Agreement 10.3.

The Company disagrees with the Brotherhood's contentions.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) G. SCHNEIDER

(SGD.) M. M. BOYLE

SYSTEM FEDERATION GENERAL CHAIRMAN

for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. C. St-Cyr

Manager, Labour Relations, Montreal

R. Lecavalier

Counsel, Montreal

D. C. Gignac

System Labour Relations Officer, Montreal

M. L. Hughes

System Labour Relations Officer, Montreal

D. Laurendeau

Regional Labour Relations Officer, Montreal

G. Desjarlais

Superintendent Work Equipment Operations, Edmonton

And on behalf of the Brotherhood:

D. Brown

Counsel, Assistant to the Vice-President, Ottawa

G. Schneider

System Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not in dispute. For many years the Company's Work Equipment Review Committee has evaluated and reevaluated equipment operated by bargaining unit members for the purposes of determining the category of equipment into which it will fall. That, in turn, affects the wage rate to be paid to the operator assigned to the equipment. The classifications determined by the Work Equipment Review Committee are thereafter included in Appendix A to the collective agreement, which has been amended by the Committee from time to time. For reasons which are not before me, and which the Brotherhood is best placed to understand, the Union has not negotiated any term within the collective agreement whereby the classification of various pieces of equipment must be the subject of negotiation and agreement between the parties. The process of equipment evaluation is more specifically reflected in Appendix C of the collective agreement, a Letter of Agreement between the Company and the Brotherhood which reads, in part, as follows:

We wish to confirm the arrangements agreed upon today with respect to the process for the evaluation and re-evaluation of work equipment machines.

Hereafter when the Work Equipment Review Committee meets for the purpose of evaluating or re-evaluating work equipment machines the Brotherhood will be advised in advance and will be given an opportunity to make a presentation to the Committee setting forth their views as to the ratings that should be assigned to the machines involved. Following the presentation the Committee will, in the usual manner, make their determinations with respect to the ratings. If their determinations do not coincide with the views expressed by Brotherhood representatives at the presentation, a further meeting with the Brotherhood representatives will be arranged at which time a Committee representative or representatives will explain the reasons for the variations.

The Company also undertook to advise the System Federation General Chairmen when a new type of Work Equipment machine is to be introduced in the Work Equipment Department.

As the foregoing agreement reflects, the Brotherhood has accepted a system of consultation and advice with respect to the evaluation and reevaluation of work equipment machines. It did not obtain a provision whereby the classification of machines is a matter of negotiation under the terms of the collective agreement.

That aspect of the process was considered by this Office in CROA 1569, a grievance which concerned the Brotherhood's claim in respect of the alleged wrongful classification of an International front-end payloader, in purported violation of Appendix A. The position of the Brotherhood in that case was rejected by the Arbitrator, who made the following observations:

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's 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.

The material reveals that at meetings held on March 14 and 15, 1979, the Work Equipment Review Committee amended Appendix A to include in the highest paid ``Special Group'' the additional classification of ``Truck and/or Trailer over 48,000 G.V.W.'. The amendment also included the following description under the heading ``examples'': ``Trucks used to haul machinery and material equipped with winches, hydraulic cranes and other attachments.''

The records kept by the Work Equipment Review Committee include a job rating sheet for the amendment which was made at that time. That document, dated March 14, 1979, indicates that what the Committee contemplated was tractor trailer vehicles over 48,000 G.V.W. such as Kenworth and White trucks, generally used to haul large roadway machines.

The vehicles which are the subject of this dispute are the Frog Truck and Switch Truck, which are not tractor trailer vehicles. They were classified in Group I on the Prairie and Mountain Regions from the time they were first bulletined in 1979. Shortly thereafter, they were equipped with larger front tires, which increased their load capacity to over 48,000 G.V.W. It appears that a Company officer then upgraded the vehicles from Group I to the Special Group, presumably on the basis that they then conformed to the description found in Appendix A as amended in March of 1979. It is common ground, however, that no specific consideration of the Frog Truck or the Switch Truck had then been made by the Work Equipment Review Committee.

In the summer of 1989 the Company put the Brotherhood on notice that in its view the Frog Truck belonged in the Group I category, rather than in the category of the Special Group, and indicated that the matter would be submitted to the next meeting of the Work Equipment Review Committee. Subsequently, as part of the Track Force Mechanization project (TFM) the classification and corresponding rate of pay for the Frog Truck was agreed to as it applied to the Eastern Lines System Federation. Agreement was not reached however, with respect to the Western Lines System Federation, it being agreed that the operation of Frog Trucks in Western Canada would be governed by Appendix A of the collective agreement. The parties' Memorandum of Agreement on the TFM project provides, in part, as follows:

This will confirm that, on Prairie and Mountain Regions, the operation of Frog Trucks is excluded from the above Memorandum of Agreement. The positions which will be required to operate Frog Trucks on these two regions will be bulletined, awarded and governed by the provisions of Agreement 10.3.

It may be noted that the hourly rate negotiated for the Frog Truck operator on the Eastern Lines is the rate corresponding to Machine Operator Group I, and not to the Special Group.

In the Arbitrator's view if the facts were to be assessed as they stood on August 2, 1989, with the execution of the Memorandum of Agreement on the TFM project, it would be difficult to dispute the position now advanced by the Brotherhood. At that point there was an effective classification, by agreement, of the Frog Truck as Category I equipment for the purposes of the Eastern Lines and an express agreed exception from that classification as regards the Prairie and Mountain Regions. In my view, in referring to the payment for the operation of Frog Trucks on those regions as governed by the provisions of the collective agreement, including Appendix A, the parties must reasonably be taken to have accepted the position of the Brotherhood, consistent with the practice earlier adopted by the Company, that in the Prairie and Mountain Regions Frog Truck operation was still to be remunerated at the level of the Special Group.

Subsequently, in October and November of 1989, in contemplation of the more widespread use of Frog Trucks on the Prairie and Mountain Regions, following consultation with members of the Work Equipment Review Committee, the Company bulletined Frog Truck Machine Operator positions indicating that they would, in future, be paid at the Group I rate. It appears, however, that the Company continued to ``grandfather'' the Special Group rate of pay for employees who already held those positions, a practice which apparently continues. Thereafter the Work Equipment Review Committee met formally on February 28 and March 1, 1990. During the course of that meeting, for the first time, it evaluated the Frog Truck and classified the equipment as falling in Group I, in accordance with the twelve factor method of evaluation.

Much of the misunderstanding in this case arises from the difference between the parties with respect to the status of Appendix A of the collective agreement. The Brotherhood would accord to Appendix A the status of a negotiated provision relating to wage rates which the Company is not at liberty to change during the course of the collective agreement. The position of the Company, however, is to the effect that Appendix A is included in the collective agreement as a form of guideline which reflects the ongoing determinations of the Work Equipment Review Committee with respect to the evaluation of equipment operated by members of the bargaining unit. Having regard to the history of these provisions, to the language of Appendix A and Appendix C, and to the prior practice of the parties as reflected, for example, in the letter of the Company of April 4, 1979, providing the Brotherhood with an updated version of Appendix A following certain determinations of the Work Equipment Review Committee at its meetings of March 14 and 15, 1979, the Arbitrator is compelled to prefer the position of the Company.

As reflected in CROA 1569, the placement of a particular piece of equipment within a given category in Appendix A is, by the agreement of the parties, in general not a matter for negotiation between the parties or enforcement through arbitration. It is, of course, within the prerogative of the parties to make an exception to that rule, and to make their own agreement with respect to the classification of any piece of equipment, whether as part of their collective agreement or as part of a separate memorandum of agreement, as was done in the Memorandum of Agreement on the TFM project. As noted above, a separate Memorandum of Agreement with respect to the classification of the Frog Truck was made as it applied to the Prairie and Mountain Regions in August of 1989. As of that time the Company was under an obligation to remunerate employees operating that equipment in accordance with the language appearing on the face of Appendix A. As the vehicle then qualified as a truck over 48,000 G.V.W., it was to be classified within the Special Group.

The issue then becomes whether it was open to the Company, thereafter, to change the classification as it applied in the Prairie and Mountain Regions by the action of the Work Equipment Review Committee at its meetings of February 28 and March 1, 1990. I can see nothing in the provisions of the collective agreement, nor within the Memorandum of Agreement of August 2, 1989 on the TFM project, which would support the view that the Company did anything to circumscribe its prerogatives in that regard. It is significant, in my view, that the Memorandum of Agreement did not specifically indicate a given wage rate for Frog Truck or Switch Truck Operators, but more generally made reference to their being governed by the provisions of the collective agreement, which must be taken to include Appendix A. For the reasons elaborated above, it is clear that the Company has retained the discretion to evaluate and reevaluate equipment for the purposes of Appendix A through the Work Equipment Review Committee. That is what transpired in February and March of 1990. In the Arbitrator's view it cannot be said that the evaluation of the Frog Truck, which then occurred for the first time, was in violation of any provision of the collective agreement or of the Memorandum of Agreement on the TFM project.

As noted CROA 1569, this Office appreciates the importance to the Brotherhood of the evaluation and classification process, to the extent that it bears intrinsically on the wage rates payable to its members. Indeed it would appear arguable that if the Company purported to exercise its discretion in respect of evaluation by the Work Equipment Review Committee in a manner that was arbitrary, discriminatory, in bad faith or for other than valid business purposes, a determination with respect to the evaluation or reevaluation of equipment might appropriately be the basis of a grievance. In the case at hand, however, there is no suggestion of any such considerations. On the contrary, the position of the Company with respect to the original intention in respect of the amendment of Appendix A in 1979 to add only tractor trailer vehicles to the Special Group is documented, and is consistent with the subsequent agreement reached with the Brotherhood on the Eastern Lines. In these circumstances it is clear that the Company acted in good faith and for the valid business purpose of maintaining a consistent and fair system of equipment evaluation throughout its operations. In the circumstances no violation of the collective agreement has occurred.

For the all of the foregoing reasons the grievance must be dismissed.

January 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR