

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 2313  
Heard at Montreal, Tuesday, 12 January 1993  
concerning  
CANADIAN NATIONAL RAILWAY COMPANY  
and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
EX PARTE  
DISPUTE:

Claim on behalf of Mr. R. Brazeau and Mr. M. Sabourin that the Company permitted snow removal work at various locations to be carried out by Signal Maintainers on December 12, 22, 23 and 30, 1989 and January 2, 1990.

BROTHERHOOD'S STATEMENT OF ISSUE:

On the dates mentioned above, Signal Maintainers cleaned snow and ice from various switches and surrounding areas.

The Union contends that the Company violated Article 34.3 of Agreement 10.1 and any other relevant Articles when Signal Maintainers were called to perform work presently, and historically, performed by the BMWE.

The Union requests that the grievors be compensated in an amount equal to all hours worked by the Signal Maintainers while performing BMWE work.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. P. Rainville

System Labour Relations Officer, Montreal

D. C. St-Cyr

Manager, Labour Relations Officer, Montreal

D. C. Gignac

System Labour Relations Officer, Montreal

B. O'Neil

Manager, S&C, Montreal

R. J. Pershick

Track Supervisor, Ottawa

And on behalf of the Brotherhood:

P. Davidson

Counsel, Ottawa

R. A. Bowden

System Federation General Chairman, Ottawa

D. Brown

Senior Counsel, Ottawa

#### AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that on five separate occasions, on December 12, 22, 23 and 30, 1989 and January 2, 1990, the Rail Traffic Controller overseeing the Alexandria Subdivision detected a malfunction in signalling equipment. On each occasion a Signal and Communication maintainer (S&C maintainer) was dispatched to the location, and determined that the signalling problem was caused by the accumulation of snow or ice between a track and the switch point of a spring switch. In each instance the S&C maintainer remedied the situation on the spot by removing the snow or ice from the switch in question. It is not disputed that in all cases the repair was necessary to ensure the continued flow of rail traffic across the subdivision, and involved the sweeping out of a relatively short portion of track.

The Brotherhood alleges a violation of article 34.3 of the collective agreement which reads as follows:

QQINDENT34.3 QQINDENTExcept in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any work except such as pertains to his division or department of maintenance of way service.

The Brotherhood argues that snow removal is work which properly belongs to the maintenance of way department, and asserts that in each of the instances giving rise to the grievance the snow removal should have been assigned to either Mr. R. Brazeau or Mr. M. Sabourin, who are responsible for track maintenance at the locations in question. The Brotherhood submits that since the malfunction of switches due to snow and ice is a common occurrence in the wintertime, the Company should first have dispatched a Track Maintenance employee to investigate the malfunction. Alternatively, it submits that, given the likelihood that the problem was caused by snow, both an S&C maintainer and a Track Maintenance employee should have been dispatched to the location, with the snow and ice to be removed by the Track maintainer. As a further alternative, its Counsel suggests that when it was determined by the S&C maintainer that snow or ice in a switch was the cause of the malfunction, a maintenance of way department employee should have been dispatched to the location to remove it.

It appears to the Arbitrator that the position advanced by the Brotherhood is tantamount to claiming an unqualified proprietary right to the removal of snow from a switch in virtually all circumstances. Having regard to the language of article 34.3, the Arbitrator has some difficulty with that submission. It should be presumed, I think, that the parties intend article 34.3 to be interpreted in such a fashion as to protect the fundamental right of the Brotherhood, on the one hand, to perform work which properly belongs to the maintenance of way department, while on the other hand allowing the Company a reasonable latitude in cases of emergency or temporary urgency.

The first issue is whether the Company acted properly in first dispatching an S&C maintainer to the locations. The material discloses that in each case the Dispatcher in the Rail Traffic Control Centre could have no way of knowing the precise location of the switch malfunction, or the reason for it. Since the malfunction effectively closed the subdivision in question to all train traffic, it is fair to conclude that the circumstances could, at a minimum, be characterized as involving some urgency. While it is acknowledged that snow and ice are frequently the cause of malfunctions during the winter months, it is also conceded that a number of other causes could equally have given rise to the system breakdown. In the circumstances the Arbitrator cannot find that the Company acted unreasonably in dispatching an S&C maintainer to investigate. Once on site, the S&C maintainer found, in each instance, that snow or ice had caused the malfunction of a switch. It does not appear substantially disputed that in several of the instances calling a Track Maintenance employee to clear the snow or ice would, in all likelihood, have caused the delay of a train. The evidence further discloses that, within the industry generally, the occasional cleaning of snow or ice from a switch by employees outside the bargaining unit is not unknown. In this regard the Company directs the Arbitrator to the Company's Operations manual, paragraph 2.30, rule 104A of which specifically directs running trades employees to clean switch points, when ice or snow conditions warrant, as part of their assignment in furtherance of their train movement. In light of that evidence it is difficult to conclude, on the whole, that the Brotherhood can assert an exclusive right to all work which involves the removal of snow and ice from switches. As in the case of the runnings trade crew which cleans a switch in circumstances which are incidental to the movement of its train, it would seem reasonable that the S&C maintainer, who is dispatched to a location to investigate and restore a switching system to operational capacity, should likewise have the latitude to remove snow or ice if to do so is necessary and incidental to the task assigned.

The concern which motivates the Brotherhood's grievance is understandable. If, as is not demonstrated on the evidence before me, it could be shown that the Company knows that a malfunction is caused by the blocking of a switch by snow or ice, it would, in my view, be much more difficult to sustain the view that the Company could, in that case, properly dispatch an S&C maintainer to remove the snow. Given that state of knowledge, where inspection is no longer an issue, and snow removal is the only work to be performed, it would seem to the Arbitrator that the work must belong to the maintenance of way department, and must be assigned to bargaining unit members, notwithstanding that it might involve the assignment of overtime. Moreover, there is no dispute before the Arbitrator that the Company cannot assign S&C maintainers to perform general snow removal work which would otherwise be assigned to track maintenance employees in the wake of snowstorm. Neither of these two circumstances described, however, obtains in the case at hand. In the instant case it is common ground that there was no fresh snowfall at or about the time of the signal failures in question. While there may have been reason to suspect that snow or ice could be the cause of the urgency, it was no more than a possibility. I am satisfied, therefore, that the Company was entitled to dispatch the S&C maintainer, in what can fairly be characterized as a circumstance of urgency, and that there was no violation of article 34.3 of the collective agreement when the signal maintainer removed the snow or ice blockage of the switch, as a necessary incident of returning the signalling system to an operational state.

For the foregoing reasons the grievance must be dismissed.

January 15, 1993

(Sgd.) MICHEL G. PICHER

ARBITRATOR