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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2585

Heard in Montreal, Tuesday, 14 February 1995

concerning

Canadian National Railway Company

and

Brotherhood of Maintenance of Way Employees

DISPUTE:

The Company's decision to award Track Maintainer/Truck Driver positions on boom trucks in Western Canada in accordance with the provisions of article 15.3 of collective agreement 10.1.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that in 1989, when the Company introduced the Track Force Mechanization project, it negotiated a new classification of Track Maintainer/Truck Driver (boom trucks). The position was awarded based on Trackman/Track Maintainer's seniority to the senior employee from supplemental agreement 10.8 who bid the assignment and the applicant was trained for the position.

On March 16, 1994, by virtue of another article 8 notice issued pursuant to the provisions of the Employment Security and Income Maintenance Agreement, the Company initiated another reorganization in its engineering forces. In the process, all the positions of Track Maintainer/Truck Driver (boom trucks) in Western Canada were abolished and readvertised.

The Brotherhood maintains that, as was the case in 1989, these positions should be awarded to the senior employees from the 10.8 supplemental agreement based on their Trackman/Track Maintainer's seniority and the Company is required to train them, if they are not qualified, to operate the boom trucks. The Union claims that the Company is under an obligation to proceed accordingly as a result of the memorandum of agreement signed in 1989, which introduced the new classification of Track Maintainer/Truck Driver. The Union refers to articles 2 and 4.A) of that document. These articles read as follows:

2. Article 2 of agreement 10.8 will be amended to include the following note to paragraph 2.6:

NOTE: The Track Maintainer/Truck Driver Classification will not be considered as included in the line of promotion for employees in the Track Department. Bulletined positions of Track Maintainer/Truck Driver will be awarded in accordance with article 15.3 of agreement 10.1 on the basis of Trackman/Track Maintainer seniority. Track Maintainer/Truck Drivers will retain and exercise their rights to promotion as contemplated in articles 25. to 2.9 inclusive of agreement 10.8.

4.A) Training and licensing for the operation of Boom Trucks and Frog Trucks will be provided to the Successful Applicant.

The Company's position is: The jobs were properly awarded in accordance with the provisions of article 15.3 of agreement 10.1. If the Company were to proceed as the Brotherhood contends, then it would be clearly violating article 15.3.

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:

N. Dionne - Manager, Labour Relations, Montreal  
M. Hughes - Labour Relations Officer, Montreal  
D. C. St-Cyr- Manager, Labour Relations, Montreal  
R. Roper - Senior Engineering Officer, Saskatoon

And on behalf of the Brotherhood:

P. Davidson - Counsel, Ottawa  
G. Schneider- System Federation General Chairman, Winnipeg  
D. Brown - Senior Counsel, Ottawa

#### AWARD OF THE ARBITRATOR

The issue in the case at hand is whether the agreement in relation to the Track Force Mechanization Project (TFM), negotiated between the parties in 1989, is still in effect and overrides the provisions of the collective agreement, as well as the more recent agreement negotiated between the Company and the Brotherhood in 1994 in relation to the implementation of the EFR project on Western Lines. The Brotherhood submits that in Western Canada the 1989 agreement continues to operate, and that boom truck assignments are to be given to employees from the 10.8 supplemental agreement based on their trackman/track maintainer seniority, with training to be provided, if necessary. The Company submits, on the other hand, that the parties intended the 1989 agreement to be finite, and operate solely for the purposes of the implementation of the TFM project. Further, it argues that by reason of a nationally negotiated agreement, signed by the System Federation General Chairman for Western Lines, the parties agreed in writing that all positions made available under the EFR agreement be awarded in seniority order to qualified employees.

Upon a review of the material filed the Arbitrator is compelled to conclude that the position advanced by the Company is the more persuasive. Firstly, the memorandum of agreement negotiated in relation to the TFM states in its preamble that it is an agreement "... pertaining to the implementation of the Track Force Mechanization Project." (emphasis added). On the face of that language, the memorandum of agreement was negotiated with a view to dealing with problems and concerns particular to the introduction and implementation of the TFM. Part of the track mechanization project involved the introduction of the boom truck, and the establishing of a new position of Track Maintainer/Truck Driver, with a corresponding hourly rate of pay. To develop a cadre of qualified staff the parties agreed, in part, that bulletined positions of track maintainer/truck driver were to be awarded in accordance with article 15.3 of collective agreement 10.1 "... on the basis of trackman/track maintainer seniority." It was further agreed that training and licensing for the operation of boom trucks would be provided by the Company to the successful applicants. It does not appear disputed that by the operation of that agreement a substantial number of employees in Western Canada have gradually become trained and qualified in the position of track maintainer/truck driver.

The Brotherhood submits, in part, that the 1989 agreement does not, on its face, contain any provision for its term or expiry. However, that does not necessarily mean that it continues unmodified in perpetuity. The issue raised in the case at hand is whether the subsequent agreement negotiated in 1994, in relation to the EFR project, expressly or implicitly qualifies or amends the earlier TFM memorandum of agreement, as it would apply in

Western Canada.

As part of the EFR process, all positions of track maintainer/truck driver in Western Canada were abolished. They were advertised and filled in accordance with an agreement signed by the parties, including the System Federation General Chairman for Western Lines, on April 29, 1994. That agreement deals, in substantial part, with the bulletining and filling of positions in the wake of the EFR project. It provides, in part, as follows:

ld) Positions advertised in the above-mentioned EFR-1 Special Bulletins will be awarded to affected employees, in seniority order, who are qualified and presently working under the supplemental agreements under which the bulletin was posted or as otherwise indicated in this agreement.

NOTE: This provision does not apply to the Permanent Machine Operators presently working under supplemental agreement 10.8 on the Prairie Region.

At the hearing the Brotherhood's System Federation General Chairman for Western Lines stated that if he had been aware that the reference to employees "who are qualified" within the foregoing paragraph would not involve an exception for filling track maintainer/truck driver positions on the basis of trackman/truck maintainer seniority in accordance with the 1989 TFM agreement, he would have negotiated a specific exception to that effect for the purposes of the 1994 agreement. While that may be true as regards his own thoughts or reservations, the fact remains that the Brotherhood did agree, without qualification, to the clear language contained in paragraph ld) of the agreement of April 29, 1994, whereby jobs are to be awarded the "qualified" senior employees.

Significantly, the parties also made a specific provision, as reflected in the NOTE to paragraph ld), excluding from its operation permanent machine operators on the Prairie Region. It is difficult to square that provision with the suggestion that the parties did not turn their minds to the special circumstances on Western Lines. With respect, in the Arbitrator's view the Brotherhood knew, or reasonably should have known, that the language which it negotiated in respect of the bulletining and filling of positions under the EFR in 1994 would be governed by the terms of the agreement of April 29, 1994, save as specific exceptions might appear within that document. As the Brotherhood must appreciate, it is not open to one party, after the fact, to state that a document that is unambiguous on its face must be taken to have some other meaning simply because a different provision might have been negotiated had that party turned its mind to the possible consequences of the language being adopted. Words used in an agreement signed by the parties to a collective bargaining relationship are to be given their obvious meaning, absent qualification within the text of the document, or the operation of some other principle, such as estoppel, which does not arise in the case at hand.

For all of the foregoing reasons the Arbitrator is satisfied that the 1989 TFM agreement, as it relates to the filling of track maintainer/truck driver positions cannot be said to override or qualify the more recent agreement negotiated by the parties for the EFR on April 24, 1994. That document governs the bulletining and filling of positions in Western Canada, and is qualified only by the NOTE in respect of permanent machine

operator positions on the Prairie Region. It must be taken as mutually intended to govern the filling of the track maintainer/truck driver positions on the basis of qualified employees, presently working under the supplemental agreements under which the bulletin was posted, in seniority order. For these reasons the grievance must be dismissed.

17 February 1995 \_\_\_\_\_  
MICHEL G. PICHER  
ARBITRATOR