

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2836

Heard in Montreal, Wednesday, 12 March 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim on behalf of Track Maintenance Foreman R.W. Anderson for 30 hours at the overtime rate.

JOINT STATEMENT OF ISSUE:

From May 30 to June 1, 1992, a Crew Crane Transporter was used to assist Welding Gang #16 with the removal and installation of rail plugs in preparation for thermite welding at various locations on the Caramat Subdivision. During this period, the Crew Crane Transporter Operator worked under the direction of the Welding Foreman. As a result of this, a grievance was filed and proceeded through the various steps of the grievance procedure without success.

The Brotherhood contends: **1.)** That the supervision of the Crew Crane Transporter Operator is work that properly belongs to a Track Maintenance Foreman; in this case, the grievor; **2.)** That the Company violated article 34.3 of Agreement 10.1 as well as any and all other applicable provisions of the collective agreement.

The Brotherhood requests that it be declared that the Company violated article 34.3 of Agreement 10.1 and that it be ordered that the grievor be compensated for 30 hours at the overtime rate.

The Company denies the Brotherhood's contentions and declines its requests.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| D. Laurendeau | – Assistant Manager, Labour Relations, Montreal |
| J. Blanchet | – Track Supervisor, Malport |

And on behalf of the Brotherhood:

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| D. Brown | – Sr. Counsel, Ottawa |
| P. Davidson | – Counsel, Ottawa |
| J. Rioux | – Director of Organizing, Training and Research, Ottawa |

AWARD OF THE ARBITRATOR

The Brotherhood asserts a violation of article 34.3 of the collective agreement which provides as follows:

34.3 Except 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.

It is common ground that the grievance before the Arbitrator arises from events in 1992, and that amendments to the collective agreement since that time have so changed the work rules that the grievance could not now succeed. The matter must, however, be determined on the basis of the agreement as it then existed. The preponderance of the material before the Arbitrator does establish that as a normal practice track maintainers and assistant track maintenance foremen were assigned, by bulletined position, to work in assisting welding gangs, under the supervision of the welding gang foreman. In that regard the Brotherhood has placed before the Arbitrator a substantial number of job bulletins of that kind covering both the Caramat and Ruel Subdivisions in May and June of 1992.

The Arbitrator accepts the representation of the Brotherhood that a normal part of the work assignment for such employees was cutting the damaged joint between two lengths of track, and installing the replacement rail plug. I am satisfied, on the balance of probabilities, that at the time in question that work could fairly be said to be "work ... such as pertains to [the track maintenance employees'] division or department of maintenance of way service."

The evidence establishes that at the time in question Track Maintainer/Truck Driver R.W. Anderson was on days off, and was available to perform the work assisting Welding Gang #16 on the Caramat Subdivision. It cannot, therefore, be said that there was an emergency or temporary urgency which prevented the Company from assigning him to the work in question. By the same token it appears that other individuals claimed by the Company to be more deserving as grievors were, in fact, assigned to clearing a derailment at Longlac. It would seem, therefore, that the grievor had a legitimate claim to the assignment in question.

For the foregoing reasons the grievance is allowed. The Arbitrator finds that the Company did violate article 34.3 of the collective agreement by failing to assign Track Maintainer/Truck Driver R.W. Anderson to perform the work in question. The Company is therefore directed to compensate the grievor for thirty hours at the overtime rates then in effect, that being the number of hours worked by Welding Gang #16 on the dates in question.

March 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR