

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2851

Heard in Calgary, Tuesday, May 13, 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Operation of the new hi-rail truck on the Pacific Region.

EX PARTE STATEMENT OF ISSUE:

In the latter part of 1993, the Company introduced a new piece of work equipment, a hi-rail truck, into the Pacific Region. The jobs of operating this truck were not bulletined and have, in fact, been filled by management employees.

The Brotherhood contends that: **1.)** the truck is used to assist maintenance of way forces; **2.)** the work associated with the operation of this truck is work that properly belongs to the BMW; and **3.)** the Company is in violation of sections 14.1, 14.4(a), 26.17 and 32.3 and Appendix B-18 of Agreement 41 and sections 2.1 and 4.1 of the Machine Operators Supplemental Agreement.

The Brotherhood requests that management employees cease operating this truck immediately, the senior qualified employee immediately available be assigned to the truck and a special bulletin be issued to fill the positions in question.

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

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews	– Labour Relations Officer, Calgary
D. T. Cooke	– Manager, Labour Relations, Calgary
W. J. Buss	– Bridge Inspection Technician, Calgary
J. L. Klett	– Supervisor, Standards and Work Procedures, Calgary
J. F. Unsworth	– Manager Structures Planning and Design, Calgary
G. J. Ewenson	– Director, Structures and Projects, Calgary

And on behalf of the Brotherhood:

D. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. McCracken	– Federation General Chairman, Ottawa
Wm. Brehl	– General Chairman, Revelstoke

S. Shaffer

– Local Chairman, Lodge 183, New Brunswick

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that in February of 1993, to assist in the inspection of bridges in Western Canada, the Company purchased a 49,000 pound three axled International hi-rail truck from an American manufacturer, the vehicle which is the subject of this dispute. A similar vehicle was acquired for use Eastern Canada. The distinguishing feature of the truck is that it is equipped with an articulating boom which allows an inspection bucket, or a repair platform, to be lowered over the side of a bridge and manoeuvred directly beneath the bridge, while the truck remains on the surface.

The material discloses that the truck utilized in Western Canada has been used for the periodic inspection of some 1,400 bridges within the Company's lines in both Western Canada and the Mid-Western United States, roughly from Vancouver to Louisville, Kentucky. The inspection function involves two persons. The driver or operator of the truck remains stationed on the surface of a bridge and has some role to play in the manipulation of the boom which lowers the second person, located in the bucket, to the area beneath the bridge where the visual inspection takes place. The bucket is also equipped with directional controls, so that the person performing the inspection can, to a certain degree, direct the movement of the boom and bucket for the purposes of inspection.

It does not appear disputed that the person assigned to the truck in Western Canada, Mr. W.J. Buss, has a role to play in the inspection function, beyond merely driving the truck. In addition to handling the boom, as described above, he is in radio contact with the inspection officer who relays information which can be taken in the form of notes by the truck's operator. The evidence further discloses that Mr. Buss has completed bridge inspection seminars sponsored by the American Railway Bridge and Building Association in Atlanta, Georgia and Denver, Colorado. Mr. Buss, who has been conferred the title of "Bridge Inspection Technician" is therefore now qualified to perform part of the inspection process, and to prepare reports in relation to the inspection of bridges.

The evidence reveals that a different system has evolved with respect to the staffing and operation of the inspection truck utilized in Eastern Canada. It is not disputed that for some 50% of its time the eastern truck is in fact utilized to work in actual bridge repairs, in addition to performing the bridge inspection functions described above. To that end, it has been outfitted with a work platform, which is utilized to lower as many as four bargaining unit employees in place to perform repairs on the underside of a bridge. The evidence discloses that the Company has assigned the task of driving and operating the eastern truck to a bargaining unit employee, Mr. Lyle Manchester, an individual classified as a Group I Machine Operator. Mr. Buss, who operates the western bridge inspection truck, is not so classified. He is treated as a non-scheduled or management employee, and paid at management rates.

The Brotherhood submits, by this grievance, that the position of "Bridge Inspection Technician" occupied by Mr. Buss should be treated as a bargaining unit position, and that its incumbent should, like Mr. Manchester, be classified as a Group I Machine Operator, within the bargaining unit. The Brotherhood relies, in part, on the provisions of section 4.1 of the Machine Operators Supplemental Agreement. Among the items of equipment listed within that provision to be operated by a Group I Machine Operator are the following:

- * Trucks – over 28,000 lbs. GVW
- * Trucks – over 16,000 lbs. GVW equipped with hi-rail equipment
- * NOTE: when expected to operate over more than one Division.

The Brotherhood's representative submits that the operation of boom trucks has long been work normally performed by bargaining unit members, and maintains that there is no basis to distinguish the truck utilized in Western Canada, assigned to Mr. Buss as a management person, from the similar vehicle utilized in Eastern Canada and operated by a Group I Machine Operator, Mr. Manchester.

The Company advances a different theory. Firstly, it argues that the collective agreement, and the long-standing practice between the parties, plainly contemplates that persons in the position of supervisors with management functions can and do drive vehicles, including hi-rail vehicles, as an integral part of their functions. By way of examples, it notes that Track Maintenance Supervisors (Roadmasters) and Bridge and Structures Supervisors (B&B Masters) commonly operate trucks as part of their functions, which can involve the inspection and the supervision of

repairs to roads and bridges. It argues that the circumstance of the western bridge inspection truck is no different. It submits that the primary responsibility of the Bridge Inspection Technician is the inspection of bridges, a purpose to which the equipment which he operates is entirely devoted. The function of bridge inspection does not, it maintains, fall within the purview of bargaining unit work, a position not challenged by the Brotherhood. In that circumstance, the Company's representative submits that the task performed by the Bridge Inspection Technician on the western vehicle must be distinguished from that performed by Mr. Manchester in Eastern Canada. As the truck in Eastern Canada is utilized fully half of its time to assist in performing the bargaining unit function of actual bridge repairs, the operation of that truck is properly assigned to a bargaining unit member. In contrast, the Western Canada vehicle, which is devoted solely to the inspection function, can be assigned to management person without encroaching on bargaining unit work.

Although the Brotherhood's representative suggested at the hearing that on occasion the bridge inspection truck in Western Canada has in fact been utilized to perform cleaning and maintenance functions, the witnesses of the Company confirmed that such activities were solely to facilitate the inspection function. Specifically, it appears that on a few occasions the western boom truck has been utilized to lower maintenance of way bargaining unit employees beneath a bridge to perform cleaning and scraping functions, which, in the judgement of the inspecting officer, were necessary to allow a proper inspection of the bridge's structural members. That, the Company submits, is to be distinguished from the regular participation of the vehicle in Eastern Canada in the actual repair and maintenance function.

The Brotherhood alleges that the Company has violated the bulletining provisions of section 14, the wage provisions of section 26 and, more importantly, the work protections of section 32.3 of the collective agreement which provides as follows:

32.3 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.

NOTE: See Appendix B-18.

It also asserts the provisions of Appendix B-18, which also deals with an undertaking by the Company, in the form of a letter of understanding, to deal with Union concerns "about supervisors performing work normally performed by employees covered by the Collective Agreements between CP Rail and the BMW.".

The fundamental issue to be resolved is whether the work which is the subject of this dispute can be said to be work "... which properly belongs to the maintenance of way department", in the sense that it is work traditionally done by members of the bargaining unit.

The case is not without some difficulty. Understandably, the Brotherhood points to the fact that its members are involved in operating many forms of boom trucks. That fact, coupled with the assignment of the bridge inspection truck in Eastern Canada to a bargaining unit member, causes it to question why the vehicle in Western Canada should not be treated as falling within the work jurisdiction of the Brotherhood, and similarly assigned to a Group I Machine Operator.

The position of the Company is not without substance, however. It is clear that the Brotherhood cannot assert exclusive work jurisdiction merely in relation to driving a truck, or for that matter operating a boom or a bucket. There is, for example, no claim by the Brotherhood in the case at hand that the operation of the bucket, to the extent that it is performed by the inspection officer who works within it, is work to be assigned to the bargaining unit. Nor do its representatives dispute the assertion of the Company that the operation of hi-rail trucks by supervisors, such as Track Maintenance Supervisors who perform inspection functions, cannot be claimed as bargaining unit work. Clearly, that is so because the driving of vehicles by such supervisors for purposes including inspections is accepted to be an integral part of their function. While the core responsibility of a Track Maintenance Supervisor may be to inspect sections of road, the operation of a truck by the individual in question is a tool integral to the purpose of performing that inspection.

The Arbitrator is satisfied that the facts disclosed ultimately support the position of the Company. The critical fact before the Arbitrator is that the entire purpose of the bridge inspection vehicle utilized in Western Canada is to

inspect bridges, a function which, it is not disputed, does not fall within the work of the bargaining unit. The function performed by the Bridge Inspection Technician is entirely related to that purpose and intention. It does not relate to the performance of repairs or any other aspect of direct maintenance, which is bargaining unit work.

If the collective agreement were clear in granting to the Brotherhood exclusive jurisdiction in the operation of all hi-rail vehicles, or the operation of vehicles utilized in the inspection of track and bridges, there might be some compelling basis for this grievance. The opposite is true, however, as outlined above. The Brotherhood has directed the Arbitrator to no provision of the collective agreement which would suggest that the acquisition of new equipment, including a hi-rail truck with a boom, used exclusively for inspection purposes, must result in the equipment being assigned to a bargaining unit member. To hold that such work must be assigned to the bargaining unit would, in my view, improperly expand the meaning of the phrase "work which properly belongs to the maintenance of way department" as it was intended and has been interpreted within section 32.3 of the collective agreement.

A different conclusion obtains in respect of the similar vehicle in Eastern Canada, precisely because it is commonly utilized to perform work which properly belongs to the maintenance of way department, namely the actual cleaning and repair of bridges. The undisputed representation of the Company is that the bridge inspection truck in Eastern Canada is utilized for actual maintenance and repair purposes for fully half of its operating time. The same cannot be said of the Western Canada vehicle. Any utilization of that truck for cleaning and maintenance purposes has been sporadic and, as a general rule, incidental to the successful performing of the inspection function. Needless to say, any substantial change in the assignment of the western vehicle to include a meaningful degree of repair and maintenance work would compel a different conclusion.

On the whole of the evidence, therefore, the Arbitrator cannot sustain the grievance. I am satisfied that the Company is correct in its submission that the work performed by the person designated as Bridge Inspection Technician is not bargaining unit work within the meaning of section 32.3 of the collective agreement. In the result, the assignment of that work to a member of management does not violate the collective agreement, including the bulletining and wage provisions and Appendix B-18. For these reasons the grievance must be dismissed.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
Arbitrator