

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3331

Heard in Montreal, Wednesday, 9 April 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The application of article 61, paragraph 61.6(c) and Addendum No. 86 of collective agreement 1.2 at Sioux Lookout, Ontario.

BROTHERHOOD'S STATEMENT OF ISSUE:

During the 1997/1998 round of national negotiations, which culminated in the signing of a memorandum of agreement on February 13, 1998, the Company agreed that locomotive engineers would be kept on their regularly assigned territory.

The Company has utilized locomotive engineers on the Redditt Subdivision, that is, a territory west of Sioux Lookout and which is under the exclusive jurisdiction of Winnipeg Home stationed locomotive engineers.

The Brotherhood contends that the Company has violated the provisions of article 61, par. 61(c) and Addendum No. 86 by using Sioux Lookout home stationed locomotive engineers off their assigned territory to rescue trains on the Redditt Subdivision.

The Company disagrees with the Brotherhood's position.

COMPANY'S STATEMENT OF ISSUE:

During the 1997/1998 round of national negotiations, which culminated in the signing of a memorandum of agreement on February 13, 1998, the Company agreed that locomotive engineers would be kept on their regularly assigned territory.

The Brotherhood contends that the Company has violated the provisions of article 61, paragraph 61(c) and Addendum No. 86 by using Sioux Lookout home stationed locomotive engineers in rescue service off their assigned territory on the Redditt Subdivision, which is under the jurisdiction of Winnipeg home stationed locomotive engineers.

The Company disagrees with the Brotherhood's position.

FOR THE BROTHERHOOD:

(SGD.) D. E. BRUMMUND
FOR: GENERAL CHAIRMAN
DIVISION

FOR THE COMPANY:

(SGD.) D. VANCAUWENBERGH
FOR: VICE-PRESIDENT, PRAIRIE

There appeared on behalf of the Company:

D. VanCauwenbergh - Manager, Human Resources, Winnipeg
 J. Torchia - Director, Labour Relations, Edmonton
 S. Blackmore - Manager, Human Resources, Edmonton
 R. Reny - Sr. Manager, Human Resources, Vancouver

And on behalf of the Brotherhood:

D. E. Brummund - Sr. Vice-General Chairman, Edmonton
 B. Willows - Vice-General Chairman, Edmonton
 B. R. Boechler - General Chairperson, UTU, Edmonton
 R. A. Hackl - Vice-General Chairperson, UTU, Edmonton

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. On January 29, 2003 Locomotive Engineer H.B. Davies and Conductor D.J. Anderson were called in straight-away service from Sioux Lookout to Armstrong, Ontario on train Q1025125 ("train 102"). It is common ground that locomotive engineers assigned to the East Pool at Sioux Lookout operate trains from Sioux Lookout to Armstrong on the Allenwater Subdivision. They are, to that extent, in single subdivision service. Additionally, locomotive engineers operating on the Redditt Subdivision are home stationed at Winnipeg. They work extended runs from Winnipeg to Sioux Lookout and return.

It is common ground that the Winnipeg crew handling train 102 from Winnipeg to Sioux Lookout were in fact unable, by reason of booking rest, to complete their run to Sioux Lookout. It appears that they went off duty at Pelican, a location six miles west of Sioux Lookout on the Redditt Subdivision. For that reason, Locomotive Engineer Davies and crew were directed to handle their train from Pelican, through Sioux Lookout, to Armstrong, Ontario. In the result, Locomotive Engineer Davies and his conductor taxied to Pelican, turned around and operated train 102 back to Sioux Lookout and thence onwards to Armstrong.

The Brotherhood took substantial exception to the Company's assignment of the crew in question to perform what it characterized as the rescue of train 102. In addition to this grievance, it filed a complaint with the Canada Industrial Relations Board alleging violations of provisions of the **Canada Labour Code**, alleging anti-union animus on the part of the Company in contravention of the provisions of the **Code**.

The Brotherhood's position is based on what it alleges is a violation of article 61.6 (c) of the collective agreement, which provides as follows:

61.6 (c) Crews will be called in rescue service utilizing any one of the following options:

Yard crews within a distance of 50 miles outside established switching limits

Spareboard

Pool, extended run or single sub (when single sub crews are used they will be kept on their own territory).

Additionally, the Brotherhood asserts the language of Addendum No. 86 of the collective agreement, a letter of understanding dated February 13, 1998 which reads as follows:

During this round of negotiations, the Council raised a concern with the Company that on occasions, employees working on single sub territory and performing rescue service were required to rescue trains off their regularly assigned subdivision.

This will confirm that single sub employees, when called for rescue service, will be restricted to their regularly assigned subdivision.

The Brotherhood submits that the foregoing changes in the collective agreement provisions were necessitated by the decisions of this Office in **CROA 2016** and **2101**. In those cases it was found that the Company could assign a single subdivision crew to collect their train at a point outside the yard limits of a terminal on a subdivision other than their own subdivision. The Brotherhood submits that the changes to article 61 of the collective agreement and the language of Addendum No. 86 were further explained in a Company document dated February 13, 1998 which reads, in part, as follows:

Explanation of Change:

In order to provide rescue service to trains in extended runs the company has four options (yard crews, spareboard crews, extended run pool crews or single subdivision pool crews) which may be used in "any" order based on cost effectiveness and operating considerations.

NOTE: When called for rescue service, employees in single subdivision pool service will be restricted to their regularly assigned subdivision (refer letter

dated 13 February 1998). It was understood between the parties that while this would preclude single subdivision pool crews from travelling out on an adjacent territory to rescue a train, it would not preclude the crew from rescuing a train which was stopped at the outer switch for the connecting subdivision. For example:

Crews operating in single subdivision pool service out of Melville on the Rivers West Subdivision could rescue a westbound train stopped at the outer switch at Rivers on the Rivers East Subdivision.

The position of the Brotherhood is that in the case at hand Locomotive Engineer Davies and crew were effectively required to rescue train 102 on a subdivision other than their own subdivision, in violation of the above noted provisions. The Company submits that they were not in fact ordered in rescue service, but rather that what occurred was a re-crewing of their assignment, so that Mr. Davies and his conductor were simply ordered in service from Pelican, through Sioux Lookout, to Armstrong, Ontario. The Company effectively argues that it is within the employer's prerogative to determine whether employees will be assigned in rescue service, acknowledging that when such an assignment is given to person in single subdivision service they must be restricted to operating on their own territory. The Company's representative maintains that the assignment in the case at hand was not rescue service, but was merely a re-crewing of the train in question, in what he characterizes as in a manner consistent with the prerogatives of the Company as confirmed in **CROA 2101**.

With respect, the Arbitrator has considerable difficulty with the argument so advanced by the Company. Firstly, it is common ground that for a period of some five years from the adjustment of the collective agreement provisions which are the subject of this grievance the Company always conducted rescue operations in a manner consistent with the provisions as argued by the Brotherhood, and never assigned single subdivision crews from the East Pool at Sioux Lookout to perform rescues west of Sioux Lookout on the Redditt Subdivision. Nor did it institute an off-territory "re-crewing", as occurred in the case at hand.

When the Arbitrator considers the purpose and value of the adjustments in language made with respect to rescue service relating to extended runs, the approach argued by the Company would effectively deprive the provisions under consideration of any significant value whatsoever. Simply put, in virtually any circumstance the Company could avoid the prohibition against

rescues by single subdivision crews on territory that is not their own by simply characterizing the work they are performing as "re-crewing" rather than as rescue service.

With the greatest respect, in the Arbitrator's view it is substance, and not form, which must prevail in the circumstances. There can be little doubt but that train 102 fell short of its mark in attempting to reach Sioux Lookout, by reason of the rest provisions of the collective agreement. What occurred is, in the Arbitrator's view, a paradigm case of what the parties have come to understand as the need to "rescue" a train in that circumstance. For the rational and consistent administration of the collective agreement, in that circumstance it cannot be the nomenclature adopted by the Company with respect to a particular assignment which determines the true nature of the work being performed. In the case at hand what plainly transpired, in substance, is that train 102 was effectively rescued from its position at Pelican, and brought eastward to Sioux Lookout by Locomotive Engineer Davies and crew, for furtherance onward by them to Armstrong, Ontario. The characterization of their assignment as "re-crewing" as advanced by the Company does not change the substance of what occurred, nor can it avoid the duties and obligations which the parties are charged with respecting by virtue of their own agreement, as reflected in paragraph 61.6(c) and Addendum No. 86 of the collective agreement.

The grievance must therefore be allowed. The Arbitrator finds and declares that the Company did violate the collective agreement by assigning a single subdivision crew from the Allenwater subdivision to rescue train 102 from Pelican, on the Redditt subdivision on January 29, 2003. As there is no reason to doubt that the foregoing declaration, and the clarification brought by this award, will be respected by the Company, the Arbitrator does not deem it necessary to make any further order for future compliance with the requirements of the collective agreement. I remain seized in the event of any dispute between the parties concerning the interpretation or implementation of this award.

April 11, 2003

(signed) MICHEL G. PICHER
ARBITRATOR