

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3350**

Heard in Edmonton, Tuesday, 8 July 8, 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE**

DISPUTE – COMPANY:

Time claim submission on behalf of Locomotive Engineer A.J. Smith of Edmonton, dated May 10, 2001, concerning not being called for Train 416.

COMPANY'S STATEMENT OF ISSUE:

On May 10, 2001, Locomotive Engineer Smith was occupying the Edmonton locomotive engineers' spareboard. Mr. Smith submitted a claim for lost earnings for that day account he had not been called to handle train 416 from Edson, AB to Edmonton, AB, but rather the Company called an Edmonton Extended Run crew from Jasper to Edmonton to pick up train 416 in Edson, AB.

The Brotherhood contends: train 416 is work which properly belongs to the Edmonton Branch Pool and in the result, the Brotherhood, and specifically, Mr. Smith, effectively lost work, for which he must be compensated actual lost time.

The Company disagrees with the Brotherhood's position and has declined the appeal.

DISPUTE – BROTHERHOOD:

Declination of a time claim, dated May 10, 2001, as submitted by Locomotive Engineer A.J. Smith of Edmonton, AB.

BROTHERHOOD'S STATEMENT OF ISSUE:

On May 10, 2001, Locomotive Engineer D.J. Warner, who was assigned to the West Extended Run Pool at the material time, was ordered in straightaway service, at the away-from-home terminal of Jasper, for 01:20, to pick up train A41651 08, at Edson, AB, and proceed to Edmonton. Meanwhile, Locomotive Engineer Smith was first out and available on the Edmonton locomotive engineers spareboard and, accordingly, was in a position to accept a call to deadhead to Edson and in turn protect and handle train A41651 08 from Edson to Edmonton.

It is the Brotherhood's position that train 416 is work which properly belongs to the Edmonton Branch Pool, and on the day in questions, Locomotive Engineer Smith was entitled to be called for such work as there was an unavailability of locomotive engineers on the Branch Pool. In the result, the Brotherhood of Locomotive Engineers, and specifically, Mr. Smith effectively lost work, for which he must be compensated actual lost time.

The Company declined the claim predicated upon the position that a train is not designated an "extended run" train versus a "single sub" train. Moreover, "the Company maintains the right to

crew a train as operational requirements dictate and the MCU will utilize any crew in position, due consideration given to customer commitments, asset utilization and cost efficiency.

The Brotherhood contends that single subdivision trains must be operated by the Edmonton Branch Pool, and by extension, manned by the Edmonton locomotive engineers spareboard in the event of vacancies arising in the pool or a shortage of manpower in the pool itself. The Union submits that various clauses found within the collective agreement, such as, and for example, articles 32, 60 and 64 and addenda nos. 79 and 102, protect such work for single subdivision assigned and unassigned locomotive engineers.

Moreover, the Brotherhood submits that the historical calling regime supports the designation of work between single subdivision and extended run trains, and those locomotive engineers that must be ordered for such work.

The Company disagrees with the Brotherhood's position, and has declined the grievance.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) D. E. BRUMMUND (SGD.) S. M. BLACKMORE

FOR: GENERAL CHAIRMAN FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

S. M. Blackmore – Manager, Human Resources, Edmonton

J. Torchia – Director, Labour Relations, Edmonton

R. Reny – Senior Manager, Human Resources, Vancouver

D. VanCauwenburgh – Manager, Human Resources, Winnipeg

And on behalf of the Brotherhood:

D. E. Brummund – Sr. Vice-General Chairman, Edmonton

D. J. Shewchuk – General Chairman, Edmonton

B. Willows – Vice-General Chairman, Winnipeg

B. Ballantyne – Local Chairman, Edmonton

R. Comparelli – Vice-Local Chairman, Edmonton

R. Cerilli – Vice-Local Chairman, Edmonton

AWARD OF THE ARBITRATOR

The essential issue in the dispute at hand is whether, as the Brotherhood claims, single subdivision trains operating between Edmonton and Edson must be manned by the Edmonton Branch Pool. The Company maintains that there is no collective agreement provision which would support the Brotherhood's claim to such work ownership, and that it can assign the handling of a single subdivision train to a crew which normally performs extended runs.

The material before the Arbitrator establishes that mixed service operates on the territory between Edmonton and Jasper. Under the extended run provisions of the collective agreement extended runs operate on a twelve hour basis between Edmonton and Jasper. Employees have the opportunity to specifically bid that work, with the advantage of fixed scheduling windows and wage guarantees. Single subdivision work is also utilized. It operates, in part, between Edmonton and Edson and is generally performed by employees in the Edmonton Branch Pool. The material before the Arbitrator also establishes that Edson based locomotive engineers handle traffic on the Alberta Coal Branch, which extends southward from Edson. It appears to be common ground that single subdivision trains are commonly operated between Edmonton and Edson, including trains originating on the Alberta Coal Branch, as well as train 416, which operates between Vancouver and Edmonton, and is the subject of the instant dispute.

Employees who bid work onto the Edmonton Branch Pool perform single subdivision work on a number of a subdivisions, and do not have the benefit of a guarantee.

On May 10, 2001 the Company needed a crew to operate train 416 from Edson eastward to Edmonton. At that point an extended run crew comprised of Locomotive Engineer D.J. Warner and Conductor J.W. Argent were available at their away-from-terminal in Jasper. Rather than call a crew from the Edmonton Branch Pool to deadhead to Edson and operate train 416 to Edmonton, the Company opted to deadhead Locomotive Engineer Warner and Conductor Argent by highway to Edson from Jasper, and to assign to them the operation of train 416 eastward to Edmonton.

The Brotherhood maintains that the work in question, being single subdivision work, properly belonged to the Edmonton Branch Pool. It therefore submits that the call to handle train 416 was improperly denied to Locomotive Engineer Smith who was then available on the Edmonton locomotive engineers spareboard, the branch pool being depleted. The instant grievance is for lost earnings by reason of the fact that Locomotive Engineer Smith was not assigned to handle train 416. For the purposes of this grievance it does not appear disputed that a spareboard assignment would be resorted to as relief to the pool.

The Arbitrator can readily understand the concerns which motivate this grievance. Extended runs are a relatively new operation, first agreed to in 1995 and gradually implemented throughout Western Canada. Prior to the introduction of extended runs, single subdivision work was normally assigned to employees stationed in the terminals attached to the subdivisions in question. A degree of ambiguity arises, however, to the extent that employees who bid extended runs can be home terminalled in the same locations as employees who opt to bid for pool service or spareboard work. In the result, the Company must manage the deployment of different classes of employees across overlapping territory.

In the instant case the onus is upon the Brotherhood. It must establish that the collective agreement effectively gives a form of work ownership in respect of single subdivision train operations between Edson and Edmonton to the employees of the Edmonton Branch Pool. In approaching that issue it should be stressed that the parties to this grievance are experienced in fashioning collective agreement provisions which protect work jurisdiction. They have done so, for example, in the designation of road and yard work and, historically, by the designation of seniority districts. It is understandable to the Arbitrator that the Brotherhood might consider it equitable that employees in pool service be given a preferential right to perform work across an adjacent subdivision, particularly where that work is single subdivision service. That kind of consideration could have been specifically addressed in the context of the Brotherhood agreeing to the extended run provisions, perhaps as part of article 60.14 and Addendum 79 of the collective agreement.

It is trite to say that a board of arbitration seized of a grievance cannot disregard or modify the terms of the collective agreement before it. I must take the collective agreement as I find it. In the case at hand, although the collective agreement does contain clear provisions which delineate work jurisdiction, and a degree of work ownership for certain classes of employees, the Brotherhood has cited no provision to the Arbitrator which would expressly or impliedly confer upon employees in the Edmonton Branch Pool exclusive work ownership over the operation of single subdivision trains between Edson and Edmonton. Similarly, I have not been directed to any provision of the extended run articles of the collective agreement whereby extended run crews are prohibited from handling single subdivision train movements as in the circumstances disclosed in the case at hand. Absent any such limitation in the language of the collective agreement, the Arbitrator can find no basis upon which it can be said the Company's

prerogative to assign employees in the manner it did is prohibited or limited. If, as the Brotherhood's representatives appear to believe, the Company's method of crew assignment utilized is not consistent with the spirit underlying the Brotherhood's agreement to extended runs in 1995, in the absence of any clear language in the collective agreement dealing with that issue, that is a matter which cannot be resolved at arbitration, but must be the subject of bargaining.

For all of the foregoing reasons the grievance must be dismissed.

July 14, 2003

(signed) MICHEL G. PICHER
ARBITRATOR