

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 50

Heard at Montreal, Monday, February 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Discipline assessed Locomotive Engineer, F.N. Briggs, for refusal to carry out Company instructions at Bathurst, N. B., 28th of January, 1966.

JOINT STATEMENT OF ISSUE:

On January 28, 1966 Mr. F.N Briggs was ordered as Locomotive Engineer for shunter train No. 778 to operate from Bathurst, N.B. Due to snow conditions it was necessary to have a snow plow operated ahead of the engine on train No. 778 from Bathurst to Tracadie. On reporting for duty Locomotive Engineer Briggs advised the Yard Agent that he would not operate the train with the snow plow ahead of the engine because the plow had wings attached. Engineer Briggs was removed from service and subsequently assessed ten demerit marks and time out of service to count as suspension for refusal to carry out the orders given him by the Yard Agent. The Brotherhood of Locomotive Engineer appealed the discipline assessed. The Company has refused to remove the discipline.

FOR THE EMPLOYEES:

(SGD.) D. E. McAVOY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt – Labour Relations Assistant, Montreal
D. C. Fraleigh – Senior Agreements Analyst, Montreal

And on behalf of the Brotherhood:

D. E. McAvoy – General Chairman, Montreal
W. J. Wright – Assistant Grand Chief Engineer, Montreal
E. J. Davies – General Chairman, Aurora
G. A. Sutherland – Vice-Chairman, Montreal

AWARD OF THE ARBITRATOR

Representatives for the Brotherhood explained that as early as December, 1964, the Superintendent of the Company at Campbellton, New Brunswick had been advised of complaints from engineers that in past winters it had been the habit to place a wing plow on the front of a freight train and that this was contrary to article 9-B of the Engineers' Schedule.

The spokesman for the Company properly maintained that the grievance as presented did not involve an interpretation of the article in question. Rather the question to be answered by the Arbitrator is whether Engineer Briggs was properly disciplined for refusing duty.

Article 9 B provides:

PUSHING WING AND WEDGE PLOWS

Locomotive pushing wing plows will not have a train attached other than the cars necessary for the trip. A qualified man shall be placed in wing snow plows. Locomotives pushing wedge plows will not be required to haul more than fifty per cent of their tonnage rating.

There was no dispute that on January 28, 1966, when Engineer Briggs was ordered for shunter train No. 778 to operate from Bathurst to Tracadie, when due to snow conditions it became necessary to have a snow plow operated ahead of the engine on this train, the employee advised the Yard Agent he would not operate the snow plow ahead of the engine as it had wings attached. The employee was removed from service and subsequently assessed ten demerit marks and time out of service to count as suspension.

Testifying at the official investigation held in this matter, Engineer Briggs stated:

After reading this message (Arrange for push plow 55434 to be handled ahead of engines Bathurst to Tracadie) and knowing there were wings on this plow I advised Mr. Branch that I would not go with this plow ahead of the engine while handling the train but I would take it behind the engine and work with it if necessary on the Caraquet Sub. I also offered to operate this plow ahead of the engine with just the van to clear the road then return to Bathurst and handle our train ...

He was asked:

According to the message from Mr. Spencer, this plow was to be operated as a push plow ahead of your engines, did this not convince you that it was to be used as a push plow only?

A. No, as it is my opinion that all plows handled ahead of an engine are classed as push plows.

Q. Were you advised by anyone that this plow was to be handled as a wedge plow?

A. No I was not advised to this effect.

The Arbitrator was told by the spokesman for the Brotherhood that a "Wing Plow" is equipped with wings operated by a qualified man placed in the cupola of the plow. To clear the snow from the tracks, this qualified man can operate a diamond which scoops up the snow in front of the plow. As it is pushed aside, he can open the wings of this plow, which in turn will throw the snow clear. The amount of snow coming back from the plow on to the locomotive obscures the engineer's vision. His only means of communication and guidance is dependent on the use of the radio-telephone with the man in the plow. If something abnormal comes up, it was said the man in the plow must transmit the information to the Engineer, who must react immediately, otherwise there is a possibility of an accident. With the cars required to be hauled by Engineer Briggs on Train No. 778, if the wings had been extended, and an emergency arose, the time it would take him after receiving a signal from the man ahead to bring the equipment to a stop would create a hazardous situation.

A "Wedge Plow" was said to be the opposite to a "Wing Plow". There are no diamonds and no wings. There is no necessity, therefore, for a qualified man to be in front of the plow. The Engineer has a clear view ahead and as there are no diamonds or wings, the emergency that would occur on a wing does not exist on a wedge plow. This accounts for the last paragraph of article 9-B.

For the Company it was stated that what was used on this occasion was a "Russel Snow Plow". This was described as a versatile piece of equipment capable of being used as a wedge plow, a wing plow or a flanger.

It was contended for the Company that this particular type of snow plow permitted locking the wings in and blocking the flanger so they could not be used. The difficulty is there was no evidence produced for the Company that the employee concerned was informed to this effect. In his official statement he was asked:

- Q. Had this plow been a straight wedge plow would you have gone?
- A. Yes I would in accordance with the last part of paragraph B of article 9-B. of L. E. Schedule.
- Q. It was the intention to lock the wings in and block the flanger up on this plow so that they could not be used. Had you known this would you have gone with it ahead of your engine?
- A. Yes, in accordance with article 9-B of B. of L. E. Schedule. That is with only the cars necessary for the trip.

For the Brotherhood it was contended that this was not a refusal based on a wilful disregard of authority. Rather, it was a justifiable conviction he was being asked to perform a duty that placed himself and others in danger.

It was the Company's contention that this employee should have complied with the instructions given him; that if he believed these instructions called for action on his part which would violate the collective agreement, he should have proceeded as ordered instead of refusing duty, and subsequently filed a grievance under the provisions of article 57.

In support of this reasoning the Arbitrator was referred to a decision by the former Canadian Railway Board of Adjustment No. 1, dated May 16th, 1963, where an Engineer had refused to carry out instructions on the pretext that there was a violation of the collective agreement. The Company offered the same argument and was upheld.

An examination of the facts involved in that dispute show there was no question of danger to the employee involved, but turned on an interpretation he had placed upon article 9-D concerning Switching at Terminals.

Had evidence been produced before me establishing that the wings and flanger were to be locked in on this trip, and that the grievor, being informed of this fact, continued to refuse the assignment, there would be no question but that the disciplinary action taken would be upheld. This follows well-established decisions in awards in industry that the proper course for an employee questioning an order is to comply and then grieve, if he believes his rights under the agreement have been infringed.

However, in my opinion, when there is a *bona fide* claim that such a refusal is based upon an actual fear of the danger, a different assessment of the conduct should be made. The employee concerned evidently was convinced. he was required to take out this train with a plow ahead of him on which the wings were in operation.

A recognition of the danger involved in such an operation is indicated by a letter from the Superintendent of Transportation, under date of January 8, 1965, in answer to the complaint made in the letter of December 31, 1964, from the Local Chairman. The reply stated:

We have no record of a wing plow being ordered in such a manner, but do know of occasions when a wing plow was used as a wedge plow in this territory. I would like to re-assure you that we have no intention of circumventing article 9, Paragraph B, of your schedule.

For these reasons, I believe a distinction should have been made in this refusal and that of a generally disaffected attitude toward authority or acting in contempt of authority. On his understanding of what he believed he was being asked to do he had reasons to question the propriety of being placed in a dangerous situation. The failure of those in authority at the scene to explain to him that such was not the case, when, according to his official statement, he would have acquiesced, is an important factor in coming to the conclusion that a proper assessment was not made of all the circumstances.

For these reasons the disciplinary action taken should be expunged from the work record of Engineer Briggs and he should be paid what he would have earned but for the period of suspension imposed.

(signed) J. A. HANRAHAN
ARBITRATOR