

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 52

Heard at Montreal, Monday, February 13th, 1967

Concerning

**CANADIAN NATIONAL RAILWAYS**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### DISPUTE:

Claim for 907 miles submitted by Locomotive Engineer D L. Whynot when not called to handle auxiliary train on the Chester Subdivision on December 31, 1965.

### JOINT STATEMENT OF ISSUE:

On December 31, 1965, a derailment occurred at mileage 38 on the Chester Subdivision. The Company ordered a spareboard crew from Halifax to handle an auxiliary train to the derailment.

Locomotive Engineer D.L. Whynot, who was regularly assigned to trains 285-286 between Bridgewater and Halifax, was on lay-over in the Fairview Bunkhouse (Halifax). He was not called to handle the auxiliary train. Mr. D.L. Whynot subsequently submitted a claim for 907 miles on the basis that the engineer from Halifax had no right to run on the Chester Subdivision and that he should, therefore, not have been called. The Company has refused to pay the claim. The Brotherhood contends this is in violation of Article 40 of the collective agreement.

### **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  
G. A. Sutherland – Vice-Chairman, Montreal

### AWARD OF THE ARBITRATOR

The facts established that at 12.30 A.M. December 31, 1965, a derailment of one diesel unit, 14 loads and 3 empties on train No. 823 occurred at mileage 38 on the Chester Subdivision between Bridgewater and Southwestern Junction.

Engineer Whynot was on layover in the Fairview bunkhouse at the time. His next trip was when he would be called for 7.00 A.M. December 31, to man his assignment, train No. 285, from Halifax to Bridgewater.

At approximately 2.00 A.M. an auxiliary was ordered by the Chief Train Dispatcher at Halifax, to proceed to mileage 38 in connection with the derailment described. The engine crew ordered for this auxiliary was a Halifax crew. The principal contention for the Brotherhood in this matter was that this crew, from Halifax, had no right beyond the Southwestern Junction on the Chester Subdivision.

This reasoning was based on the provisions of Article 40 of the agreement and the provisions of the Montreal Agreement. In the latter, Section 2, it is provided:

Engineers whose names on December 15, 1926, were shown on the various separate seniority lists included within the territory which now comprises seniority District No. 1 will be accorded prior rights to all service operating over their former separate seniority territories, except as otherwise provided for herein.

It was conceded that normally train movements on the trackage between Bridgewater and Southwestern Junction are manned by locomotive engineers from Territory "E". Train movements over the trackage Halifax to Truro are manned by engineers from Territory "D". Thus, it was claimed, Engineer Whynot had prior right over all engineers from Halifax.

The spokesman for the Brotherhood contended that the Dispatcher knew Engineer Whynot was available in the Rest House at Fairview, which was said to be within walking distance of the shop track. Therefore, according to Article 40, he should have been called for this duty.

It was stated the Brotherhood recognized that an emergency existed insofar as there was a derailment. Further, it was admitted that speed is of the utmost importance in getting a crew on the job. These admissions did not extend, however, to the question of crew availability. It was said Engineer Whynot could be on duty for this assignment in minutes, if he had been called.

For the Company it was first contended that Article 26 of the agreement must be considered. It reads, in part:

Engineers in unassigned service will not be run off the Seniority District to which assigned, unless the requirements of the service make it unavoidable. Engineers so used will stand first out of the distant terminal unless their home terminal is the same as Engineers on the seniority district over which they were used.

This, it was claimed, established that engineers in unassigned service may work off their seniority district in certain circumstances. In this instance the crew called were in unassigned service.

Article 23 (a) was then read:

Engineers in unassigned service who are available and are run-around avoidably will be paid fifty (50) miles for each run-around and hold their turn out. An engineer in unassigned service who has come on duty in his turn will remain with the train called for and will not be entitled to compensation under this rule if another Engineer who comes on duty later gets out of the terminal first.

That provision, of course, would not apply to Engineer Whynot, who was in assigned service.

Of governing importance was the next provision relied upon for the Company. It was Article 29 (a), reading:

Engineers in regularly assigned service will not be considered absent from duty after being released from duty at the end of a day's work, until again required for their regular assignment. If their services are required in the interval they will be notified and if so notified and not used will be paid the daily guarantee for passenger service unless cancelled prior to the starting time of their

regular assignment if it were being worked on that day, in which event they will be allowed half of the daily guarantee for passenger service.

It was urged that Engineer Whynot at the time the auxiliary was ordered still had his assignment to cover. At the time a decision was reached to man the auxiliary, it was not known whether Engineer Whynot would be called to man his own assignment, Train No. 285 from Halifax to Bridgewater, for which he would be called for 7.00 a.m.

The Company representative agreed with the Brotherhood's submission that in abnormal circumstances such as a derailment, the Company must immediately respond with all of the resources at hand to provide the type of emergency service necessary to cope with the situation. A derailment could involve loss of life or serious injury.

This necessity, it was urged, brings into effect a special provision Article 23 (b) that under contract interpretation takes precedence over a general provision such as Article 40. It reads:

In case of accident requiring the use of auxiliary the first engineer available may be called without involving claim for run-around.

Clearly no language restriction is placed upon management in the exercise of its judgement in determining "the first engineer available" in such circumstances. Here the test to be made is whether in the exercise of that judgement Engineer Whynot should have been selected, because in physical fact he was as readily available as the one selected.

Given the discretion provided in Article 23(b), and knowing of his responsibility to have Engineer Whynot available for his regular assignment at 7.00 a.m., can it be said the Dispatcher exercised a discriminatory violation of the grievor's rights. In the circumstances described I cannot find that he did. It is a fact that after the other crew had been called and were on duty, it was ascertained that Engineer Whynot's run the following morning would have to be cancelled, and he was so notified. That information however, was not available when the choice was made, under the provisions of Articles 26 and 23(b).

In these special circumstances I find there was no violation of Engineer Whynot's rights under the agreement. Therefore, this claim is denied.

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**