

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 55

Heard at Montreal, Monday, March 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yardman R.J. Sudchak, Winnipeg, for eight hours pay at pro rata rates, October 28, 1965.

JOINT STATEMENT OF ISSUE:

Railiner 2960 arrived Winnipeg on Train No. 2 at 0655, October 28, 1965. At approximately 1000 that date it was coupled to engine 4152 and moved to Symington diesel shop by an Outside Hostler arriving at the latter point at 1045. Yardman Sudchak submitted a run-around claim for eight hours pay at Yard Foreman's rate under the provisions of article 7, clause (c)(2) of the collective agreement on the grounds that the Company violated article 4, clause (b) of the collective agreement when it did not have yardmen accompany the movement.

The Company declined payment of the claim.

FOR THE EMPLOYEES:

(SGD.) H. C. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. St. Pierre – Labour Relations Assistant, Montreal
A. D. Andrew – Senior Agreements Analyst, Montreal
A. J. DelTorto – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

H. C. Walsh – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

As indicated in the Statement of Issue this problem turns upon the interpretation to be placed upon article 4, clause (b) of the collective agreement, particularly the first paragraph thereof, reading:

Yardmen will do all transfer, construction, maintenance of way, and work train service exclusively within switching limits, and will be paid yard rates for such service. Switching limits to cover all transfer and industrial work in connection with terminal.

On October 28, 1965, Railiner 2960 arrived at the passenger station in Winnipeg on Train No. 2 at 0655, for movement to the diesel shop for wheel repairs. At approximately 1000 the same date it was coupled to Engine 4152 which had arrived off Train No. 3 and both units were moved under the control of a hostler to the diesel shop.

The grievor is a qualified yard foreman and assigned to the yard helpers' spare board at Winnipeg. His claim is based on failure to call him to accompany the Railiner and the engine to the shop.

Railiners are rail diesel cars and, like locomotives are used in train service. It was alleged they differ from locomotives in that they have facilities for carrying passenger and/or lading. They are motive power units and are operated by engine service employees. When used in train service, they are manned by conductors and, where required, trainmen.

For the grievor it was claimed the failure to call him was a violation of article 7, clause (c) (2) of the Yardmen Schedule;

A spare yardman standing first out and available for service, not called in his turn, will be paid eight (8) hours straight time and will be placed at the bottom of the spare board.

One aspect of this claim, not refuted, and which would prevent it being successful is that at the time this railiner and diesel unit moved to the diesel shop, there were four crews working in the vicinity of the Winnipeg passenger station. If the Company had decided, whether by contractual obligation or otherwise, to use yardmen to accompany the movement, one of the four yard crews on duty would have been utilized. In other words, there was no necessity to tap the yard helpers' spare board, on which the grievor was assigned, for this duty.

Involved in the problem, however, which both sides want determined, is the question whether moving this railiner in the manner described was properly within the scope of hostlers or yardmen's duties.

For the Brotherhood it was contended that what occurred was a transfer movement and came properly within the term used in article 4, clause (b) "... all transfer work" with the word therein "all" emphasized.

Because this railiner was not worked under its own motive power while en route to Symington Yard, it was contended, it was in fact "transferred".

The essence of the argument advanced for the Company was that a railiner is a type of motive power, and its movement within a terminal, whether one or several units, is not transfer service but rather "hostling service" to which yardmen have no contractual rights whatever.

Support for this reason, it was urged, was to be found by reference to the collective agreement between the Company and the Brotherhood of Locomotive Firemen and Enginemen governing service of Fireman/Helpers and Hostlers, particularly 5 and 6 thereof.

Transfer service is concerned with the handling of transfer movement within a terminal, namely, traffic arriving in various yards within a terminal whether it be traffic that arrived on a train or originated at a local industry. This type of equipment is sorted and marshalled in blocks by yard crews. Some are forwarded on trains to distant terminals; others are taken by yard engines assigned to industrial switching and placed at local industries still others are moved to other yards in the terminal for distribution, placement, or for forwarding on trains.

Hostling services, on the other hand, it was contended, is concerned with the handling of motive power movements within a terminal. Hostlers are employed to move motive power into and out of round houses and diesel shops, to and from incoming and outgoing tracks, to and from servicing points for fuel sand and water, and between passenger stations and round houses, yards or other facilities. In other words, hostlers move motive power anywhere it is required within a terminal, with no limitation placed by the collective agreement on the number or kind of units which may be handled at any one time, nor, it was urged, is there anything that would prohibit hostlers from moving inoperative motive power units.

A study of these arguments and the applicable provisions convinces that to include any form of motive power, including a railiner, traditionally handled by hostlers within the limits of a terminal, would be to ignore that it is a particular type of equipment, different entirely to that which is ordinarily transferred by yard crews; that in those circumstances to include it within the scope of the word "transfer" as used in article 4, clause (b) would be to add something that must be obtained by negotiation rather than arbitration. Such a negotiation would have to take into consideration the obligation upon the Company created under different contracts. One of these was cited in the Company's brief from that between it and the Brotherhood of Locomotive Firemen and Enginemen:

6.10 When hostlers are employed in handling engines between passenger stations and round houses or yards, or required to make a main line movement between outer switches of yard to service the locomotive or turn on wye, they will be paid ...

A hostler will not move an engine beyond yard limits.

For both the reason given as to the individual claim by this grievor and the broader reasons outlined above, this grievance is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR

