

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 92

Heard at Montreal, Tuesday, November 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Conductor W. Lewis, Trainmen P.E. St. Charles and J.L. Gregoire for 200 miles each, account regular assignment cancelled August 25th and 26th, 1966.

JOINT STATEMENT OF ISSUE:

Conductor W. Lewis, Trainmen P.E. St. Charles and J.L. Gregoire were regularly assigned to the Ste. Thérèse – Mont Laurier Wayfreight, home terminal Ste. Thérèse, bulletined to leave Ste. Thérèse 10:00 a.m., Sunday, Tuesday and Thursday, leave Mont Laurier 7:00 a.m., Monday, Wednesday and Friday. On August 25th, Conductor Lewis and crew were cancelled. Claims were submitted by the Brotherhood under the provisions of article 17(d) of the collective agreement covering Conductors and Brakemen. Claims were denied by the Company.

FOR THE EMPLOYEES:

(SGD.) J. I. HARRIS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. M. HAND
GENERAL MANAGER, ATLANTIC REGION

There appeared on behalf of the Company:

R. Colosimo – Supervisor Personnel & Labour Relations, Montreal

And on behalf of the Brotherhood:

J. I. Harris – General Chairman, Montreal

L. Safnuk – Vice-General Chairman, Sudbury

AWARD OF THE ARBITRATOR

The members of this crew were assigned to the regular wayfreight run bulletined to operate from Ste. Thérèse north to Mont Laurier on Sundays, Tuesdays, and Thursdays, returning on Mondays, Wednesdays and Fridays. Ste. Thérèse was the home terminal.

It was disclosed that under date of November 2, 1965, the Brotherhood served notice on the Company of its desire to open the agreement. When the parties failed to arrive at a settlement of the issues through negotiations, the dispute was submitted to a Board of Conciliation. Its report was delivered on August 9, 1966. The recommendations were not accepted by the Brotherhood. On August 22, 1966, they advised the Company a strike had been called for August 26, at 12:00 noon, standard time.

The Brotherhood claimed that in cancelling the wayfreight assignment of this crew on August 25 and 26, because of the impending strike, this represented a violation of the contents of article 17 (d) of the collective agreement, reading in part:

When regular assigned wayfreight runs are cancelled and it is possible to operate other trains, the assigned crews will be allowed 100 miles except when cancelled on Sundays or on statutory holidays.

It was claimed the circumstances involved on the dates in question did not come within the only two exceptions mentioned in this provision.

The Arbitrator was also advised that after this crew was cancelled on August 25, the Company was obliged to call an unassigned crew from St. Luc to operate between Ste. Thérèse and Mont Laurier and return. This crew were called for 1:30 p.m. to man an extra train through to Mont Laurier, which is the established terminal for the regular wayfreight crew. On the morning of August 26 this crew were ordered at Mont Laurier for 5:00 a.m. to operate through to Ste. Thérèse, thence to St. Luc Yard.

This operation, it was contended, supported the Brotherhood's claim.

For the Company it was submitted that with a strike impending, it was essential that the Company ensure its equipment was safely stored for the duration of the strike. This involved the equipment assigned to the Ste. Thérèse – Mont Laurier wayfreight being moved to Montreal, south of Ste. Thérèse and stored prior to the time set by the Brotherhood for the commencement of the strike. This caused the cancellation of the assignment in question for August 25 and 26.

For the Company it was admitted that a train did operate on August 25th from St. Luc north through Ste. Thérèse to Mont Laurier and return to St. Luc. The crew were called in turn-around service. The Company desired to tie up that equipment that day, but on arrival at Mont Laurier the crew booked rest (that explained the train moving out of Mont Laurier after the expiration of their rest, which brought them into the next day).

It was submitted by the Company that the provisions of article 17, clause (d) apply under normal conditions and it cannot be considered it has application in the circumstances under which this assignment was cancelled – due solely to the action of the Brotherhood calling a strike.

There can be no question from the foregoing that it was the Company's desire to run trains on the days in question. They were prevented from doing so because of the employees' decision not to permit this to be done. It is entirely reasonable that, faced with a strike, the Company should not permit its equipment to go out on trips that could not be completed at a time and at a place that would permit its proper storage for the term of the strike.

I am satisfied with the explanation offered by the Company as to the operation of the train from Ste. Thérèse and Mont Laurier on the 25th, that it as the unexpected development of the crew booking rest that delayed the operation of this train to its storage point within the time originally intended.

In article 17 (d) the important words to be applied are "... and it is possible to operate other trains ...". A strike does not make it possible to operate other trains.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR

