

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 97

Heard at Montreal, Monday, December 11th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of Engineers T.W Tucker and N. Parker, Fort William, Ontario, for payment of normal mileage of their assigned passenger trains on February 12th and 13th, 1967, respectively, when Canadian Pacific Trains Nos. 1 and 2 were detoured over Canadian National tracks and manned by Canadian National locomotive engineers.

JOINT STATEMENT OF ISSUE:

Engineers Tucker and Parker were assigned to passenger Trains Nos. 1 and 2 on the Kaministiquia Subdivision operating between Fort William and Ignace, the recognized terminals. Due to a derailment west of Ignace resulting in Canadian Pacific tracks being impassable, Trains Nos. 1 and 2 on February 12th and 13th, 1967, were not operated between Fort William and Ignace but were detoured via CNR between Fort William and Winnipeg and manned by CNR engineers.

Engineers Tucker and Parker claimed payment on the basis of a normal train operation on their assigned subdivision.

The Brotherhood of Locomotive Engineers contend that Engineers Parker and Tucker, under the provisions of article 26, clause (f)(1) of the collective agreement, should have been used to man Canadian Pacific Trains Nos. 1 and 2 over Canadian National Tracks.

The Company has declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) A. C. DOULL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. C. STEELE
GENERAL MANAGER

There appeared on behalf of the Company:

- P. A. Maltby – Supervisor Personnel & Labour Relations, Winnipeg
- C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

- A. C. Doull – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

It was established that Engineers Parker and Summers were the Engineers assigned to Passenger Trains Nos. 1 and 2 on the Kaministiquia Subdivision, operating between Fort William and Ignace, the terminal. As of February 12th and 13th, 1967, Engineer Summers was on annual vacation. Through the exercise of seniority, Engineer Tucker relieved Engineer Summers and assumed the conditions of employment of the assignment on which he was relieving.

Due to a derailment Canadian Pacific tracks west of Ignace were impassable, preventing operation on them of Trains Nos. 1 and 2. These trains, therefore, were not operated between Fort William and Ignace on February 12th and 13th, 1967, but were detoured via Canadian National between Fort William and Winnipeg and manned by Canadian National locomotive engineers.

The representative for the Brotherhood claimed, and it was not disputed, that this assignment had been obtained by the exercise of seniority rights under the provisions of article 26(f)(1). Engineer Parker is #4 and Engineer Tucker #13 on the 345 member 1967 seniority list covering seniority in this district.

Reference was made to the second sentence of article 26(f)(1), reading,

26 (f) (1) Senior engineers shall have preference in all classes of service at any station to which his seniority entitles him and must stay on the run chosen throughout the period the timetable is in effect or until a change is made necessary by promotion or demotion. ...

It was claimed for these employees that the CNR employees who had operated these trains on the days in question had, in effect, been hired by the Canadian Pacific. This being so, their seniority numbers would have been 346 and 347 compared with those of the employees in question.

The fact that it is necessary to detour trains from time to time, it was claimed, was provided for in the collective agreement. Article 13, captioned "piloting" and clause (a) reads:

13 (a) An engineer in charge of an engine ordered over any subdivision with which he is not familiar will be furnished with a competent pilot, in addition to engine crew. Engineer will be used as pilot when available.

Commenting on the Company's submission that the employees in question had been assigned for work on the Kaministiquia Subdivision and that these two runs had not been made over that subdivision, it was submitted for the Brotherhood that while the wording of a bulletin indicates where an assignment will normally operate, it does not exclude changes in emergency situations.

It was further submitted that both the CNR and the CPR operated under the Uniform Code of Operating Rules; that therefore, engineers are qualified under the rules to operate on either road; that to use a CPR engineer on the CNR trackage, it would only be necessary to supply him with a copy of the current timetable and if necessary apply the provision of article 13, concerning a pilot.

The Company's contention was that the assignments in question had been made in accordance with the provisions of the agreement, as follows:

Reference my Bulletin No. 2010 concerning change of timetable to take effect 24.01k, October 30th, 1966. The following are the successful applicants:

FORT WILLIAM DIVISION

PASSENGER TRAINS

Kaministiquia Sub.

– Trains No. 1 & No. 2
Home Tml. Ft. Wm.

ENGINEMEN

N. Parker (10)
J. Summers (16)

The Uniform Code of Operating Rules defines a subdivision as "A portion of a division or area designated by timetable".

The timetable issued in respect of the Fort William, Kenora, Winnipeg terminal and Brandon Divisions designates the Kaministiquia Subdivision as that portion of Canadian Pacific Lines between Fort William and Ignace. It was submitted, therefore, that when Engineers Parker and Summers bid on and were assigned to Trains

Nos. 1 and 2, Kaministiquia Subdivision, they were assigned to and thereby obtained entitlement to man those trains when operating between Fort William and Ignace. It was claimed such entitlement did not embrace the manning of Trains No. 1 and 2 irrespective of the territory over which such trains were operated.

Reference was made by the Company's representative to **Case No. 15** of the former Canadian Railway Board of Adjustment, that included this finding:

... and while bulletins were intended to indicate the amount of work or earnings in the particular assignments mentioned, they did not constitute guarantees over schedule provisions.

A further reference was made to **Case No. 75** of the Canadian Railway Office of Arbitration, dealing with the interpretation to be placed upon the term "Operation Schedule", in which it was held that the language of a general provision must prevail "over and above anything contained in an operation schedule."

The nub of the Company's submission was that bulletins do not constitute guarantees for engineers. Guarantees, where existent, must be contained in other provisions of the collective agreement; that there is no provision in this collective agreement specifying a guarantee for engineers in passenger service.

It is obvious that on the days in question these trains did not operate over the territory covered by the employees' bulletined assignment. Briefly put, those runs were cancelled on those days between Fort William and Ignace. The engineers in question were thus in no different position than they would be if the runs had been cancelled for any other reason.

Nothing submitted would indicate an intent on the part of those executing this agreement that in such circumstances employees concerned were to be paid. This would require a specific provision dealing with such a situation. This does not appear in the agreement.

Article 13 (a) could have no bearing. It applies only when an engineer in charge of an engine is "ordered" over a subdivision with which he is not familiar, in which case he must be furnished with a pilot. It does not establish his right to do so if passage on his ordinary run can not be made.

For these reasons these claims are denied.

(signed) J. A. HANRAHAN
ARBITRATOR