

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 118

Heard at Montreal, Tuesday, September 10th, 1968

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood contends that the Company violated Articles 1.8, 2.1, 10 and 27.9 of Agreement 5.1 When it used constables to protect value shipments being moved in passenger or express trains.

JOINT STATEMENT OF ISSUE:

Prior to September 30, 1967 employees classed as Train Value Guards were employed as and when required to protect valuable shipments while en route between stations. On that date the Company decided that, for the future when negotiable currency in excess of specified amounts was being handled in trains Canadian National police constables would be utilized to protect same.

The Brotherhood protested this action as a violation of the collective agreement and claimed that the protection of valuables while en route was work normally assigned to Train Value Guards.

FOR THE EMPLOYEES:

(Sgd.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. O. McGrath – Labour Relations Assistant, Montreal
C. Reynolds – General Superintendent, Montreal
G. Carra – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier – Executive Vice President, Ottawa
P. E. Jutras – Regional Vice President, Montreal
P. Languay – Local Chairman, Montreal
F. C. Johnston – Regional Vice President, Toronto

AWARD OF THE ARBITRATOR

Following a series of train robberies which occurred in 1966 and 1967 the company determined to assign Railway Police Constables to protect shipments of currency, negotiable bonds or bullion of a certain value. Had it not been for this decision, train value guards would, it seems, have been assigned to protect certain of these shipments.

A train value guard is defined in article 1.8 of the collective agreement as follows:

1.8 Train Value Guard

An employee required to cover a given train service route and assigned to the exclusive duties of guarding valuable traffic in transit.

Before the adoption of the company's new policy as to the protection of valuable shipments, a policy had existed calling for the use of train value guards wherever shipments over a certain value were made. The value of the shipments in such cases was substantially higher than that for which the company now uses a Railway Police Constable. Further, there were many occasions on which some other classification of employee was responsible for a value shipment depending on its amount. A train value guard was used when express was being handled by a train baggageman and the value of the shipment (currency, bullion or bonds) exceeded a given figure, or when a train messenger was responsible for the shipment and its value exceeded a higher figure.

There were no regular full-time assignments as train value guards, the use of personnel in the classification depending on the nature and value of the shipment in any case. Employees used as train value guards held full-time assignments as warehousemen. These employees, covered by the present collective agreement, were called on to act as train value guards in accordance with the policy then in existence.

Under the company's new policy, no train service employee, whether a train baggageman or a train messenger may handle more than a certain amount without a police escort. The amount is much lower than that for which a train value guard would have been required in the past. Thus, Railway Police Constables are used to guard certain express shipments in cases where a train value guard would formerly have been used, and in certain other cases as well.

The collective agreement does not require that train value guards be used in any particular circumstances. Where, however, train value guards are used, there is no doubt that their employment is subject to collective agreement 5.1. It is, in essence, the union's case that the company has used non-bargaining unit employees to perform work coming within the classifications covered by the bargaining unit. In this respect, I am in general agreement with the views expressed by his Honour Judge Bennett in the **American Standard Products Case**, 11 L.A.C. 283, where he stated at p. 288:

We concur in the view that has been expressed by a number of arbitrators that in the absence of a specific restriction in the agreement, a company may assign work, previously performed by employees within the bargaining unit to employees excluded from the bargaining unit provided always that it is open to the union to prove in a grievance that the employees to whom the work has been assigned are doing the work normally performed by the members of the bargaining unit to such an extent as to bring them within the bargaining unit.

The question in the instant case is whether the Railway Police Constables, who are not in the bargaining unit, and who were assigned to protect certain valuable shipments, were performing the work of train value guards to such an extent as to bring them within the bargaining unit. To put it crudely, were they in fact acting simply as train value guards? Although the case is a difficult one, my answer must be that they were not. Their duties, in my view went beyond those set out in the definition of train value guard in article 1.8 of the collective agreement.

If some other sort of non-bargaining unit personnel had been assigned to similar duties, my answer might well have been different. There is no doubt however, that the situation called for certain qualities and skills which only the Railway Police Constables could be expected to possess. Indeed, without in any way slighting the work of the train value guards, it is obvious that the Railway Police Constables by virtue of their authority, training and experience performed quite a different function from that of the train value guards. That is why their services were used in this situation. It is not disputed that they provided a greater measure of protection, both for the shipment and for the crew, than the train value guards were equipped to do. The duties of the railway police must be said to include, but to go beyond, those of the train value guards.

In these circumstances, it is my conclusion that the company assigned its police constables to perform work distinct from that of the train value guards. This conclusion is reached having regard to the particular circumstances of this case.

For the foregoing reasons, there has been no violation of the collective agreement in the employment of Railway Police Constables in the circumstances described. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR