

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 144

Heard at Montreal, Tuesday, March 11th, 1969

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

Claim for \$78.21 submitted by Engineer C.J. Letterick for his proportion of the monthly guarantee.

### **JOINT STATEMENT OF ISSUE:**

During the period March 21 to March 26, 1968 Engineer C.J. Letterick earned \$31.89 while manning a road assignment out of Bathurst, N.B.

Engineer C.J. Letterick submitted a claim for \$78.21, an amount he alleges is due him as his proportion of the monthly guarantee under Article 12 of the Collective Agreement.

The Company declined payment of the claim.

### **FOR THE EMPLOYEES:**

**(Sgd.) D. E. McAVOY**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY**

**(Sgd.) K. L. CRUMP**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

M. A. Cocquyt – Labour Relations Assistant, Montreal  
C. F. Wilson – Senior Agreements Analyst, Montreal

And on behalf of the Brotherhood:

D. E. McAvoy – General Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

The assignment in question was an “outpost” assignment, originating and terminating at Bathurst. The assignment was set up as unassigned service, and normally a spare board would have been established for it. The parties agreed, however, that this assignment would be established as though it were a regular assignment of the sort contemplated by article 60, and that the minimum guarantee set out in article 60 would apply.

Engineer H.D. Bulmer was on the assignment from March 1 to March 20, 1968. The grievor went on the assignment in the exercise of seniority provisions and worked from March 21 to March 26, when the assignment was abolished. He claims to be entitled to his proportionate share of the monthly guarantee.

Article 60 of the collective agreement is as follows:

#### **Article 60 – Road Service Guarantee**

**60.1** Regular assignments in road service, exclusive of work train, which do not operate into or out of a terminal where a spare board is maintained, will be guaranteed the equivalent of 3,000 miles per month at the minimum through freight rate.

**60.2** Engineers filling such assignments who are ready for service the entire month and who do not lay off of their own accord will receive not less than the minimum monthly guarantee. Such Engineers may be used in other road service to complete guarantee when it will not interfere with their performing their regular assignment.

**60.3** An Engineer filling an assignment only a portion of the month will be paid his proportion of the monthly guarantee.

The value of the monthly guarantee for the assignment was \$569.10 for the full month, or \$447.10 for 26 days when the assignment existed. The grievor claims the benefit of 6/26 of that amount as his proportion of the guarantee. The union agrees with these figures for the purposes of this case.

It is the company's position that the guarantee was used up before the grievor took over the assignment, since in the first twenty days of March Engineer Bulmer had earned \$600.21, thus exceeding the guarantee. The company argues that the guarantee is directed to the assignment itself and not to the engineers who may work on the assignment. In support of this position the company relies on certain language in article 60, and in particular on article 60.1, which provides that regular assignments ... will be guaranteed the payment set out. Plainly, the provision appears to be that it is the assignment which has the benefit of the guarantee. On the other hand, the union also relies on the terms of article 60, in this case especially on article 60.1, which provides that "an engineer ... will be paid ... the monthly guarantee". Again, in article 60.2 it is provided that "engineers ... will receive" the guarantee.

The collective agreement, of course, must be interpreted in such a way as to avoid inconsistency or absurdity. In choosing between the conflicting interpretations of article 60 which are offered, I have in mind not only the very words of the agreement but also the purpose towards which they are plainly directed. In my view, the union's contention is correct: a monthly guarantee is provided, and where more than one engineer fills the assignment in a given month, the guarantee is distributed *pro rata* among them. It is true as I have noted that article 60.1 provides that "the assignment" is to be guaranteed a minimum monthly rate. It is not straining the language of the agreement unduly to say that this provision must mean there is to be a minimum guarantee in respect of the assignment for any month. Unless this interpretation is given, the provisions in article 60.2 and 60.3 become meaningless. It should be remembered too that a "guarantee" is something to be enjoyed by persons, not by conceptual entities. An assignment cannot endorse cheques or issue receipts.

Any doubt on this matter, however, is in my view, clearly dispelled by the unmistakable language of article 60.3. It cannot be stated more clearly. In the instant case the grievor is an engineer who filled the assignment for only a portion of the month. He is therefore entitled to his proportion (that is, 6/26), of the monthly guarantee. This is not, contrary to the company's argument, the equivalent of a "daily guarantee" of the sort provided for elsewhere in the agreement. Rather it is, as the agreement provides, a guarantee in respect of that portion of a month on which an employee works on an assignment to which article 60 applies. There is no provision for *pro rata* distribution of earnings, and it would seem both unfair, and contrary to the obvious purpose of the minimum guarantee that an employee's income should be subject to the fortuitous circumstance of some other employee's earnings or lack of them. The guarantee is, in general terms, a *quid pro quo* for the availability of the employee. In this case the grievor was on the assignment, and away from his home terminal, for 6 days, for which he received \$31.89, having made one trip of 152 miles. It is no comfort to the grievor that his predecessor had been much busier, and had earned in excess of the total monthly guarantee.

In my view, article 60 of the collective agreement guaranteed to the grievor his proportionate share of the monthly guarantee, and the grievance must therefore succeed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**