

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 146

Heard at Montreal, Tuesday, April 8th, 1969

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMAN

DISPUTE:

Claim of the Brotherhood that the Company is in violation of Article 224(d) of the collective agreement concerning the operation of self-propelled equipment.

JOINT STATEMENT OF ISSUE:

On October 30, 1968, the General Chairman of the Brotherhood protested the Company's use of a "Koehring Rail Aid", employed in ditching operations on the Lillooet Subdivision.

It was claimed that the machine was ditching with a car or cars coupled, in violation of Article 224(d).

The Company maintains that the method of operation of the Koehring Rail Aid complies with the requirements of the collective agreement.

FOR THE EMPLOYEES:

(Sgd.) R. F. LANGFORD
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) J. A. DEPTFORD
REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver
F. B. Estabrooks – Superintendent Caribou Division, Georges
P. A. Deas – Personnel Supervisor, Vancouver

And on behalf of the Brotherhood:

R. F. Langford – General Chairman, Prince George

AWARD OF THE ARBITRATOR

Article 224(d) of the Collective Agreement in effect between the parties is as follows:

(d) Self-Propelled Equipment

- (i) With the exception of off-track equipment, all self-propelled equipment operating on the main track outside yard limits, such as locomotive cranes, self-propelled drivers, self-propelled hoists, self-propelled ditchers, self-propelled rail loaders and shovels, etc., shall have a conductor in charge.

NOTE: With respect to the Koehring Rail Aid, it was agreed that when the Koehring Rail Aid is operated with no cars involved, such as when it is used as a ditcher for casting over, it is then considered as off-track equipment similar to the electro-gang tie tamper, in that it can be removed from the track at the point of operation, without the necessity of running to a siding to clear passing trains.

When the machine is riding on its carriage on the track and a car or cars are coupled, it will then be considered as on-track equipment, and will be manned in the safe manner as other on-track self-propelled equipment in accordance with the provisions of the agreement.

- (ii) Track motor cars used by or for a contractor to transfer material or workmen on a contract other than for the Company will have a conductor in charge.
- (iii) Self-propelled equipment as enumerated above will not be used to switch cars, place loads or remove empties unless manned by a full crew. This, however, not to be construed as prohibiting the use of such self-propelled equipment without full crew, in the moving of cars or empties along tracks where they are being loaded or unloaded of material and supplies on material or shop yard tracks.

NOTE: Pilot or self-propelled equipment will be paid on the same basis as an assigned work train

This grievance arises out of the use of a Koehring Rail Aid in certain ditching operations, where the Rail Aid was used together with an accessory car, used as a hopper for waste material. This accessory car, designed and built by the Company, is used in locations where the Rail Aid's bucket cannot effectively be used to dump waste material, that is in defiles or "cuts", the material scooped up in the Rail Aid's bucket is dumped into the hopper of the accessory car, and dumped from the car where convenient.

The accessory car in question is quite distinct from the ordinary rolling stock of the Company, and could not be confused with a regular dump car or gondola. It is less than fourteen feet long, and the capacity of the hopper is 144 cubic feet. It cannot in the normal course be coupled on to other cars, and is not included in the consist of any train. What is most important, it is cleared from the track by the Rail Aid itself whenever necessary. Where it is necessary to clear the track, the Rail Aid lifts the accessory car from the track, unloads itself on the ramp of its own car, and then removes its own car from the track. The entire group of equipment can be taken off the track in this way in a short time, and there is no movement to a siding to clear the track. It may be said that if there were any such movement, then a conductor would be required under the terms of the agreement.

The crew of this equipment consists of an equipment operator and an oiler. No conductor is used. Where the Rail Aid is used by itself it is agreed that no conductor is necessary. It is the Union's contention, however, that a conductor is required, since there is a "car" involved. Thus, it is argued, the note to Article 224(d)(i) does not apply, so that the situation is governed by the general conditions of Article 224(d)(i), by which a Conductor would be required.

I am unable to accept this contention. The accessory "car" used in connection with the Rail Aid in the cases described is not a "car" in the sense in which that word is used in Article 224. The Rail Aid in these cases, together with the accessory car, is used precisely as contemplated by the note to Article 224: as a ditcher. In effect, the Rail Aid with its accessory car constitutes one piece of equipment, and they may properly be considered as off-track equipment under the note to Article 224(d)(i), since they may be removed from the track at the point of operation, without the necessity of running to a siding to clear passing trains.

In **Cases 729 and 730** before the Canadian Railway Board of Adjustment No. 1, it was held, respectively, that the use of a tie tamper was not, and the use of a Burro Crane was a violation of the collective agreement where no Conductor Pilot was used. These decisions, however, are not helpful in the instant case, since the provisions of the collective agreement have been significantly changed, particularly by the addition of what is now the note to Article 224(d)(i). The only conclusion which can be drawn from these cases is that a tie-tamping machine was “off-track equipment”, whereas a Burro Crane was not. However this may be, the Koehring Rail Aid is clearly to be “considered as off-track equipment” where it is used in the manner contemplated by the note to Article 224(d)(i). In the instant case the Rail Aid, in conjunction with the accessory car, was being used in precisely the manner contemplated by the note to Article 224(d)(i). The equipment, considered as a whole, was removable from the track at the point of operation. It is my conclusion that in these circumstances, no conductor was required under the terms of the collective agreement.

For the foregoing reasons the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR