

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 388

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Discipline assessed Yard Foreman E.J. Lanning, Sarnia.

EMPLOYEES STATEMENT OF ISSUE:

On October 8, 1971, while the 0655 "tunnel" assignment at Sarnia, Ontario, was travelling westward on the South Track, it passed Signal 2LA which displayed a stop indication, and ran through Power Switch No. 7 causing damage thereto.

Following investigation, Yard Foreman E. J. Lanning, who was in charge of the assignment, was suspended from service for 45 days for violation of Operating Rules 34 and 292.

The Union appealed the discipline on the grounds that it was "most severe", and requested that it be removed and the employee compensated for loss of earnings.

The request was declined by the Company.

FOR THE EMPLOYEES:

(SGD.) G. E. McLELLAN

ASSISTANT GENERAL CHAIRMAN

There appeared on behalf of the Company:

A. J. DelTorto – System Labour Relations Officer, Montreal
J. A. Cameron – Labour Relations Assistant, Montreal

And on behalf of the Union:

G. E. McLellan – Assistant General Chairman, Toronto
R. E. Treitz – Local Chairman, Sarnia

AWARD OF THE ARBITRATOR

The Company has raised a preliminary objection going to the question of the jurisdiction of the Canadian Railway Office of Arbitration to entertain this matter. While the grievance was at first received by the Company and processed through the grievance procedure to arbitration, the Company refused to join in the joint statement of issue when it was found that the grievor was assigned to a “tunnel” assignment at Sarnia. The objection is that the grievor was not a member of the bargaining unit covered by Collective Agreement 4.16, the agreement under which the Union seeks to proceed. This objection is one of fundamental jurisdiction, and the fact that it was not raised earlier does not prevent its being raised now.

There is no dispute as to the facts relating to the matter of jurisdiction. The grievor is an employee of the Company, and he works on the “tunnel” assignment between Sarnia, Ontario and Port Huron, Michigan, USA. This assignment involves work which was formerly performed in the name of the St. Clair Tunnel Company, although that Company was dissolved in 1958 and its assets transferred to the Canadian National Railway Company. Its operations, however, are distinguishable from those in the Company’s yard operations at Sarnia, and the persons now performing its work are covered by a Collective Agreement between the Company and the Union in respect of the Company’s “Central Region Lines in the United States”. It is common ground that the grievor is covered by the Collective Agreement, known as Agreement 4.18, which applies to employees in these operations. His wages and working conditions are governed by that agreement, and not by Agreement 4.16 which applies to employees in the Company’s yard operation at Sarnia, or more generally to “Trainmen and Yardmen on Eastern Lines”. The grievor, it seems clear, is not on an “Eastern Line” within the meaning of Agreement 4.16.

The incident over which the grievor, a Canadian, was disciplined occurred in Sarnia. It was the Union’s contention that as he was in Canada and subject to Canadian law, the grievance ought to be heard by this tribunal. No doubt the grievor was, at the time, subject to Canadian law and in particular to the Uniform Code of Operating Rules issued under the authority of the Canadian Transport Commission. The question of jurisdiction, however, is not one of what rules apply, but rather of what tribunal is to apply them. In particular, the question before me is whether the Canadian Railway Office of Arbitration has jurisdiction in the matter, and the answer to that question depends simply on whether or not the grievor is subject to a Collective Agreement under which grievances may be referred to the Canadian Railway Office of Arbitration. In the instant case, the question is whether the grievor is a member of the bargaining unit covered by Collective Agreement 4.16. It is clear from the foregoing that he does not. Therefore, it must be concluded that the Canadian Railway Office of Arbitration has no jurisdiction in the matter, and these proceedings must accordingly be terminated.

(signed) J. F. W. WEATHERILL
ARBITRATOR