

# CANADIAN RAILWAY Office OF ARBITRATION

## CASE NO. 459

Heard at Montreal, Tuesday, September 10, 1974

Concerning

Canadian NATIONAL Railway COMPANY

and

BROTHERHOOD OF Locomotive Engineers

### DISPUTE:

Claims of Locomotive Engineers J.A. Chupa and L.M. Seeley, January and February, 1973.

### JOINT STATEMENT OF ISSUE:

Locomotive Engineer J.A. Chupa was assigned to snow plow service on the Albreda and Tête Jaune Subdivisions including Blue River and McBride yards. On February 5, 1973, he was ordered for 0600 hours, commencing work at Blue River; after completing his tour of duty on the Albreda Subdivision, he went off duty at Blue River at 2205 hours. He worked in snow plow service until February 15, 1973.

In addition to the pay for performing such service on February 5, 6, 7, 8, 9, 13, 14 and 15, 1973, Locomotive Engineer Chupa claimed, as "held" time, from midnight until he reported for duty each day. The Company declined payment of the "held" time and the Brotherhood contends that, in refusing to make payment, the Company violated Paragraph 22.1, Article 22 of Agreement 1.2

Similar claims dated January 3, 4, 5, 6, 17, 18 and 19, 1973, were submitted by Locomotive Engineer L. M. Seeley and declined by the Company

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) A. J. SPEARE (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

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

M. Delgreco – Labour Relations Assistant, Montreal

C. L. Brown – Assistant Superintendent, Jasper

And on behalf of the Brotherhood.

A. J. Speare – General Chairman, Edmonton

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### AWARD OF THE ARBITRATOR

Although the assignment on which the grievor applied was nominally "work train service" he was in fact assigned to snow plow service and in my view it should be considered that Article 22.1 applies. That article provides as follows:

**22.1** Locomotive engineers assigned to snow plow service will receive 1 day's pay for the first 8 hours of each 24 hours so held. If held less than 8 hours they will be paid pro rata per hour.

On each of the days referred to the grievor (for purposes of convenience, only the case of Mr. Chupa was dealt with in detail) worked long hours, usually starting at 0600. His claim in respect of these days is to be paid from midnight (or, in the case of February 5, from 0105, the time of his arrival at Blue River) until his actual starting time. The theory of this claim is that he was "held" during this portion of the first eight hours of each twenty-four hour period (apparently considered as a calendar day).

In my view, while it may be that an employee in the grievor's position might be considered to be "held" during the periods before he went on duty on the days in question, it is apparent that he was not "so held" for a twenty-four hour period on any of those days. The article does not provide any special compensation for the first eight hours of any day on which work is done, rather, it provides, in effect, that where an employee assigned to snow plow service is held for such service over a twenty-four hour period (and it is not necessary here to decide whether that refers to a calendar day), then he is to be paid a day's pay for the first eight hours of that period.

In the instant case, the grievor was not "so held" on the days referred to. He was in fact on duty, and the occasion for invoking this form of guarantee did not arise. It may be noted that on February 12, 1973, the assignment was not operated. It was considered in that case that the grievor was "held" during that period and he was accordingly paid for eight hours. That payment was correct. On all of the other days when he might otherwise have been held, but did in fact work, he was paid in respect of substantially more than eight hours.

For the foregoing reasons, it must be concluded that the grievor was not entitled to any payment pursuant to Article 22.1 in addition to that received in respect of the days in question. The grievance is therefore dismissed.

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

**ARBITRATOR**