

# CANADIAN OFFICE OF ARBITRATION

## CASE NO. 470

Heard at Montreal, Tuesday, October 8th, 1974

Concerning

Canadian NATIONAL Railway COMPANY

and

BROTHERHOOD OF Locomotive ENGINEERS

### DISPUTE:

Grievance concerning the absence of a locomotive engineer on a trackmobile in use at Moncton Shops, New Brunswick.

### JOINT STATEMENT OF ISSUE:

The trackmobile at Moncton Shops is operated by a shop employee A grievance has been progressed by the Brotherhood contending that a locomotive engineer represented by the Brotherhood of Locomotive Engineers should be employed on the trackmobile. The Company declined the grievance.

The Brotherhood contends that, in declining the grievance, the Company has violated Article 98 of Agreement 1.1.

FOR THE EMPLOYEES FOR THE COMPANY:

(SGD.) D. E. McAvoy (SGD.) G. H. Bloomfield

GENERAL CHAIRMAN ASSISTANT Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – System Labour Relations Officer, Montreal

M. Delgreco – Labour Relations Assistant, Montreal

D. J. Bourque – General Yardmaster, Moncton

J. L. Melanson – Assistant Mechanical Officer, Moncton

J. R. McLeod – Labour Relations Assistant, Moncton

And on behalf of the Brotherhood.

D. E. McAvoy – General Chairman, Montreal

-

### AWARD OF THE ARBITRATOR

Article 98 of the collective agreement is as follows..

**98.1** Whenever electric or other power is installed as a substitute for steam, or is now operated as a part of the System on any of the tracks operated or controlled, the locomotive engineers shall have preference for positions as engineers or motormen on electric locomotives but these rights shall not operate to displace any men at present holding such positions.

The effect of this provision is, in my view, to protect the rights of locomotive engineers to operate locomotives where the source of power is something other than steam. A trackmobile is a self-propelled machine which can move a limited number of cars on the track, and which can also operate on tires on the ground. The issue in this case is whether, in the particular operations involved, engineers are entitled to preference as operators of such equipment.

In **Case No. 406**, it was held that the Company might properly assign work that had formerly been done by yard employees using an engine, to shop employees using a trackmobile. The Brotherhood of Locomotive Engineers, however, was not a party to that case. Reference was made there to **Case No. 137** which dealt generally with the matter of manning requirements where a trackmobile is used for switching movements. It was noted in that case (which, again, involved Trainmen and not Engineers), that a trackmobile was operated by a carman.

The general principle enunciated in **Case No. 137** and repeated in **Case No. 406** is, in effect, that if it is simply a question of substituting a new form of machine for an old, with the new machine performing all of the functions and in the same circumstances as the old, then the rules relating to the manning of the old machine would apply as well to the new. It is in a broad way, the same type of principle which is expressed in Article 98 of the collective agreement in this case. Mention may also be made of **Cases 24** and **69**, where it was considered that a self-propelled crane was not an "engine" for the purposes of the manning provisions of the collective agreements there in question.

In the instant case a trackmobile is used to move cars between the Car Shop and the Paint Shop, that is, within a designated area, and it passes cars over a scale. A maximum of six empty cars is handled at any time. The trackmobile is usually operated by a carman or carman helper although in some cases, as where cars are to be moved from one track to another, or when on-track-operated equipment operates on the trackmobile's territory, a yard foreman pilot is assigned.

A trackmobile is not simply a locomotive with a new source of power, and the functions for which it may be used are not the same although there is some overlap – as those for which a locomotive is designed. It may be that a more powerful sort of trackmobile would be developed, which could perform all of the functions of a yard engine. whether or not such a piece of equipment, used as a locomotive in every sense, would properly have to be operated by an engineer is clearly a very different question from that in the instant case. Here, a piece of special equipment is used to perform one of the many functions which may be assigned to a yard engine. It is a different type of equipment, and its use, at least for the restricted work involved here, does not require the same qualifications of its operator as does a locomotive. This is not, therefore, a case of substitution of electric or other power for steam within the meaning of Article 98.

For the foregoing reasons it must be concluded that there has been no violation of the article referred to, and the grievance is accordingly dismissed.

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

**ARBITRATOR**