

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 738

Heard at Montreal, Tuesday, January 8, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer J.W. Konkin of Winnipeg, Man., for trainer allowance on November 19, 1978.

JOINT STATEMENT OF ISSUE:

On November 19, 1978, Locomotive Engineer J.W. Konkin was called to deadhead from Winnipeg to Rainy River, Ontario, on train 818. At the same time Student Engineer G.J. Landick was ordered to deadhead with Locomotive Engineer J.W. Konkin.

While waiting for train 818 to leave Winnipeg (Symington), Locomotive Engineer Konkin instructed Student Engineer Landick on an inspection of a locomotive prior to leaving the shop track, and gave additional information on the trip to Rainy River, Ontario.

Locomotive Engineer Konkin on his time return claimed an additional \$10.83 trainer allowance in accordance with Section B and D of Addendum #21 of Agreement 1.2 (Training Agreement) for such instruction and counselling of Student Locomotive Engineer Landick.

The Company paid the claim for deadheading as submitted but declined payment of the trainer allowance.

The Brotherhood contends that Paragraph 3 of Section B and Paragraph 1 of Section D of the Memorandum of Agreement dated 26 February 1974 entitled "Training Agreement" were violated by the Company.

FOR THE EMPLOYEE:

(SGD.) A. J. SPEARE

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

L. R. Weir	– System Labour Relations Officer, Montreal
G. W. Threlfell	– Regional Master Mechanic, Winnipeg
M. A. Cocquyt	– System Master Mechanic, Montreal

And on behalf of the Brotherhood:

A. J. Speare	– General Chairman, Edmonton
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AWARD OF THE ARBITRATOR

During a period of training, Student Engineer G.J. Landick was assigned to take instructions from the grievor. The grievor, on a number of occasions, filed reports relating to the Student's performance. On the occasion in question, both the grievor and the student were deadheading from Winnipeg to Rainy River. The grievor had no responsibility for train operation at that time.

There is in effect a memorandum of agreement between the parties dated February 26, 1974, relating to the training and qualification of employees in training to become enginemen. It contemplates that regular locomotive engineers will participate in the training of others, and make progress reports on them. An allowance is payable in respect of such work, and the question is whether or not that allowance was payable in the instant case where the grievor, in the course of deadheading from one point to another, accompanied the trainee on an inspection of the locomotive and discussed various points relating to inspection and test procedures and the characteristics of the subdivision on which they were travelling.

Section B of the memorandum of agreement relating to training is as follows:

B SUBSEQUENT TOURS OF DUTY

1. When the employee in training is in possession of a temporary operating certificate issued by the appropriate officer of the Company he may be required to perform additional tours of duty to gain further experience.
2. During such tours the employee in training will be permitted to operate the locomotive and/or train under the direction and at the discretion of the locomotive engineer.
3. During such tours the locomotive engineer will provide such advice, counsel and supervision as may be required to ensure the safe operation of the locomotive and/or train and to assist the employee in training in the improvement of his skill and competence.
4. When during such tours the employee in training assumes control of the locomotive and/or train the locomotive engineer will have his responsibilities relaxed to the extent that he will not be held responsible for rough handling or damaged drawbars; he will, however, continue to be held responsible for the observance of operating rules, timetable special instructions and related regulations.
5. The locomotive engineer will be required to complete progress reports on the employee in training as may be directed by the Company. Incompetence, lack of judgment or other detrimental traits or attitudes will be reported. The responsibility for certifying an employee in training as a qualified locomotive engineer shall be that of an engine service supervisor who has an engine service background.

The trainee in this case was in possession of a temporary operating certificate. By clause 1 of section B of the memorandum, the trainee might be required to perform additional tours of duty. During "such tours", the trainee, it is contemplated, would operate the train under the direction and at the discretion of the engineer: (clause 2). In the instant case of course, the grievor was not the engineer of the train, and the trainee did not operate the train. The Union relies, however, on clause 3 of Article B, which refers to the "advice, counsel and supervision" which the engineer is to provide. This advice, counsel and supervision, however, is to be provided "during such tours", that is, tours in which the trainee is permitted to operate the locomotive, and the advice, counsel and supervision is for the purpose of ensuring "the safe operation of the locomotive" as well as improving the trainee's skill and competence. What happened in the instant case was simply the natural and proper offering of friendly and helpful advice by an experienced employee to a trainee. It was not something that the engineer was required to do in the course of a tour of duty as contemplated by Article B (3) of the memorandum.

In the circumstances, the grievor was not required to do anything other than travel from Winnipeg to Rainy River. The student was under the same requirement. The grievor was not under any obligation even to speak to the student. It was natural and commendable that he should, as a responsible and interested person, take the opportunity to point out various matters relating to the work and to discuss them. That was not, however, the sort of situation in which the memorandum of agreement imposed any duties or called for any extra payment.

In the instant case there was no violation of Article B (3), and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR