

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 793

Heard at Montreal, Wednesday, November 12, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for three hours pay at punitive rate for Friday, October 5, 1979, submitted by Mr. J.M. Luzny.

JOINT STATEMENT OF ISSUE:

On October 5, 1979, Machine Operator Abday was called to the scene of a crossing accident around 0430 hours in order to push derailed cars clear of the public crossing. Maintenance Engineer R.J. Melelskie had called Mr. Abday who was a qualified machine operator. Track Maintenance Foreman Luzny was not called to the scene of the derailment as his services were not required and he was not qualified to operate the equipment required that night.

The Brotherhood claims that the Company violated Section 1.1 and 13.1 of Wage Agreement No. 17 in permitting Maintenance Engineer to perform the work of calling, assigning duties or otherwise supervising an employee normally under the supervision of the grievor.

The Company declined the claim.

FOR THE EMPLOYEE:

(SGD.) F. T. STOPPLER

SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE

VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

C. L. LaRoche	– System Labour Relations Officer, Montreal
T. D. Ferens	– System Labour Relations Officer, Montreal
D. A. Skelly	– Employee Relations Officer, Winnipeg
G. Gysel	– Labour Relations Officer, Winnipeg

And on behalf of the Brotherhood:

F. T. Stoppler	– System Federation General Chairman, Winnipeg
A. Passaretti	– Vice President, Ottawa
A. F. Currie	– Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

At 0350 on October 5, 1979, a derailment of two cars occurred at a public road crossing in Regina. The cars blocked the crossing. The Company (acting through a Maintenance Engineer, Mr. Melelskie), called a Tractor Operator at 0430, and the Tractor Operator worked for two hours, under the direction of the Maintenance Engineer, to push the cars clear of the public crossing. He then returned his tractor to the yard.

No issue arises as to the work performed by the Tractor Operator, nor as to his payment therefor. The issue in this case is whether or not Relief Track Maintenance Foreman Luzny ought also to have been called and paid in respect of the time in question.

It is true that some of the functions performed by Mr. Melelski were functions appropriate to the job of a Track Maintenance Foreman. Calling and supervising maintenance employees is work of that sort. To some extent, such work might also be appropriate for a supervisor or a Maintenance Engineer, that is, for certain persons not members of the bargaining unit. Mr. Melelskie might also have had functions to perform, or possible decisions to make, which would not be within the scope of the work of a Track Maintenance Foreman.

It remains, however, that certain work of a Track Maintenance Foreman was performed, but that a Track Maintenance Foreman was not called. I do not consider that Mr. Melelskie's work was such as to bring him within the scope of the bargaining unit. Therefore, unless there is some provision in the collective agreement preventing his doing what he did, there was no violation of the agreement: see **Case No. 322**.

Articles 1.1 and 13.1 simply define the bargaining unit and the acquisition of seniority within it. There was no violation of those provision in this case. Article 32.3 of the collective agreement, however, is as follows:

PERFORMANCE OF MAINTENANCE OF WAY WORK BY EMPLOYEES OUTSIDE OF DEPARTMENT

32.3 Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any work except such as pertains to his division or department of maintenance of way service.

It may well be that, in the circumstances of this case, Mr. Melelskie was assigned (or assigned himself) to perform certain work "which properly belongs to the Maintenance of Way department". Article 32.3 does prohibit the performance of "bargaining unit" work by "employees outside of the maintenance of way service" (I do not deal here with the question whether or not Mr. Melelskie was such an employee). Assuming that what occurred in this case would, as a general matter, fall within the prohibition of Article 32.3, it is my view that the situation was one of "temporary urgency", so that the exception set out in the article applied. There were, therefore, circumstances in which Mr. Melelskie could properly act as he did. Whether or not he did the work well or complied with all applicable regulations are not matters relating to the application of the collective agreement.

In the circumstances of this case, then, there was no violation of the collective agreement, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR