

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1094

Heard at Montreal, Wednesday, May 11, 1983

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION

DISPUTE:

Alleged violation of article 11 – Consist of Crews – of Agreement 4.16, when Speno Rail Grinding Machine RMS No. 1 was operated from Fort Erie to Toronto on 01 April, 1983.

JOINT STATEMENT OF ISSUE:

On 01 April, 1983 the Company operated Speno Rail Grinding Machine RMS No. 1 from Fort Erie to Don Yard, Toronto with a crew consist of one Conductor and one Brakeman.

The General Chairman submitted a grievance on 04 April, 1983 contending that Speno Rail Grinding Machine RMS No. 1 was a train and that the Company was therefor in violation of paragraphs 11.4 and 11.8, article 11 of Agreement 4.16.

The Company declined the grievance on the basis that only a Conductor/Pilot and a flagman were required.

FOR THE EMPLOYEES:

(SGD.) R. A. BENNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

H. J. Koberinski	– Manager Labour Relations, Montreal
M. Delgreco	– Senior Manager, Labour Relations, Montreal
W. Hansen	– Senior Communication Analyst, Operations, Montreal
A. Pronovost	– System Engineer Track, Programming, Montreal
W. Rupert	– Manager Rules, Chief of Transportation, Montreal
J. A. Sebesta	– Co-ordinator Transportation – Special Projects, Operations, Montreal
G. Blundell	– System Labour Relations Officer, Montreal

And on behalf of the Union:

R. A. Bennett	– General Chairman, Toronto
J. Hone	– Vice General Chairman, Toronto
T. G. Hodges	– Secretary, General Committee, Toronto
R. T. O'Brien	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

This case relates to the operation of the Speno Rail Grinding Machine, described in **Case No. 1090**. In the present case, the issue is not whether a Locomotive Engineer is entitled to operate the machine, pursuant to collective agreement 1.1, but rather whether the operation of this equipment must be in accordance with the train crew requirements set out in articles 11.4 and 11.8 of collective agreement 4.16. Those articles are as follows:

FREIGHT SERVICE

11.4 Except as otherwise provided in this article, all freight, work and mixed trains will have a conductor and two brakemen; on mixed trains, one brakeman may be used to handle baggage, mail and/or express. Where conditions warrant an additional brakeman will be supplied on wayfreight and pick-up trains and where three brakemen are now employed on such trains, no change will be made except by agreement between the Local Chairman and local Company officers.

11.8 In the Application of this article, the Company agrees to provide 30 days notice of its intent to implement the terms of this Agreement to:

- (a) assigned Road Switcher, Work Trains, Way Freights and Switcher Service; and
- (b) assigned and/or unassigned freight service on subdivisions other than those specified in Attachment "A" to addendum No. 3."

These provisions deal with the matter of crew consist. The several clauses of article 11 deal first with passenger service, then with freight service. The operation of the Speno Rail Grinding Machine is not work in either passenger service or freight service, nor (although this is less obvious) is it the operation of a "work train" in the well-known sense. Although, as was indicated in **Case No. 1090**, the machine "looks like a train", and although the performance of rail grinding is certainly "work", the operation of this machinery is not the running of a "work train", any more than is the operation of a Sperry car or a self-propelled crane. Complex though it is, the Speno Rail Grinding Machine, when in service for the purpose for which it was designed is, I find, one unit of self-propelled machinery.

It may be that this machinery would, in some circumstances properly be described as a "train", within the meaning of the Uniform Code of Operating Rules, where "train" is defined as "an engine or more than one engine coupled, with or without cars, displaying markers". An "engine", it may be noted, is defined as "a unit propelled by any form of energy, or a combination of such units operated from a single control, used in train or yard service". When these definitions are read together, as I think they must be, it is apparent that what must be determined, in order to decide whether or not the crew consist provisions of the collective agreement apply, is the nature of the service in which any particular equipment is being used at any time. With respect to the Speno Rail Grinding Machine, I have set out my finding that it is, when in service for the purpose for which it was designed (that is, when in rail-grinding operations), one unit of self-propelled equipment. Article 11 of the collective agreement does not apply with respect to its use in such operations, and to that extent, the Company's position is correct.

In the instant case, however, this equipment was dispatched from one point to another as a "work extra", and was, in this particular instance (as far as appears from the material before me), in work train service. In such a case, the provisions of article 11.4 apply. While the crew for such a movement may be "reducible", it does not appear that the notice contemplated by article 11.8 was given. Thus, a Conductor and two Brakemen were required in this case. Accordingly this particular grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR