

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1146

Heard at Montreal, Friday, November 11, 1983

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Interpretation of article 16.03, 16.04 a) and b) and 16.07.

JOINT STATEMENT OF ISSUE:

The Union grieves that the Railway did not respect article 16.03 of the collective agreement in not allowing the crew of T. Burns to book rest enroute on the expiration of ten (10) hours on duty.

The Railway contends that the contract was complied with in all respects and that in accordance with the collective agreement, the train continued the remaining twenty (20) miles to their destination.

FOR THE UNION:

(SGD.) JACQUES ROY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) ROGER L. BEAULIEU
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Gauthier – Counsel, Labour Relations, Sept Îles
R. L. Beaulieu – Manager, Labour Relations, Sept Îles
J. J. Sirois – Acting Superintendent Transportation, Sept Îles
M. Tardif – Labour Relations Assistant, Sept Îles
C. Bois – Labour Relations Assistant, Sept Îles

And on behalf of the Union:

Me. R. Cleary – Counsel, Montreal
J. Roy – General Chairman, Sept Îles
R. Proulx – Alternate Vice-President, Ottawa

AWARD OF THE ARBITRATOR

At 23.00 hrs. on December 16, 1982, Conductor T. Burns and crew while on the return portion of a turnaround service from Mai to Ross Bay Junction advised the dispatcher on passing through Oreway that the grievors intended to book off for the rest period pursuant to article 16.03 of the collective agreement. There is no dispute that the grievors would have been on duty for ten hours at 24.00 hrs. The relevant provisions of article 16 read as follows:

16.03 Employees may book rest after ten (10) or more hours on duty by giving the dispatcher at least one (1) hour's notice along with the number of hours of rest desired. If dispatcher will provide a satisfactory run to the destination point, arrangements may be made to continue trip. The employee will be the judge of his own condition. Rest booked must be in even hours and

cannot be more than nine (9) hours or less than six (6) hours. Rest period will be deducted in computing overtime.

16.04 In instances where rest is taken the Railway will provide the necessary accommodation as per a) or b) below. Consideration will also be given to the availability of eating facilities when this is desired by the employee booking rest.

...

b) In circumstances where proper notice of rest desired has been given and ten (10) hours on duty have expired and sleeping accommodation cannot be provided or eating facilities are not available, the employee, if relief is not provided, or if arrangements have not been made by the dispatcher to provide a satisfactory run to destination, will be run to a point where sleeping and eating facilities are available or to the point of destination, by light engine.

The dispatcher offered the grievors the choice of stopping either at Seahorse or Little. It is significant to note that Seahorse provides eating and sleeping facilities whereas Little does not. Article 16.04(b) of the collective agreement allows employees requesting a rest period under article 16.03, where such facilities are not provided, to proceed by "light engine" to a location where such facilities are provided. That is to say, they are entitled to park their rail cars and cargo and proceed by engine to that location.

Conductor Burns and crew elected to take their rest period at Little. Little is approximately 18 miles (and 40 minutes) from the crew's ultimate destination at Mai. At Little the crew experienced difficulty in parking the train for the purpose of proceeding by light engine to the nearest destination where sleeping and eating facilities were provided. Coincidentally that location happened to be at Mai, the crews' ultimate destination.

Mr. J. J. Sirois, Acting Superintendent, Transportation, estimated, given the number of cars and the prevailing climatic conditions, it would take Conductor Burns and crew 1-1/2 hours to prepare the train to travel by light engine to Mai. This information was not contradicted. In light of the circumstances, Mr. Sirois directed the crew to proceed the eighteen miles (40 minutes) to Mai and complete the run. The grievors complied with Mr. Sirois' direction despite the expressed concern that the Company had "thrown out the contract".

The Trade Union insisted that the Company violated article 16.03 when it failed to allow the grievors, despite the obvious impracticality, from proceeding to Mai "by light engine". The Trade Union submitted that the collective agreement was clear, direct and without ambiguity with respect to the Employer's obligation. The provisions of article 16.03 do not allow for any compromise occasioned by supervening events to obviate the Employer's obligation.

The Company made numerous submissions as to why article 16.03 had not been violated. I do not propose to repeat them in light of my reasons for rejecting the grievors' allegation. I am of the view that Conductor Burns and crew must be deemed to have known that when they elected Little as the destination for their rest period that eating and sleeping accommodation could not be provided. In my view when Little was chosen instead of Seahorse the grievors also knew or should be deemed to have known that their run would have been substantially completed. At that point I agree with Mr. Sirois that it made no practical sense to permit the crew to proceed "by light engine" to Mai to secure the required accommodation where that destination represented the termination of their run.

The underlying objective of article 16.03 is to prevent a crew from endangering the public as well as themselves when fatigue may impede their work efficiency. After ten hours they are the sole judges of whether they ought to continue working or exercise the benefits under article 16.03. In choosing Little to be the destination to book off the grievors must be deemed to have waived their privileges under article 16.03. That is to say, to have exercised those privileges (to travel by light engine to Mai) they created just as much a risk to the public and themselves than if they had decided to complete the regular run. Indeed, they would have created a greater risk of an accident in light of the additional preparatory time that would have been necessary to park the rail cars and cargo in order to travel by light engine to Mai.

For all the foregoing reasons I have not been satisfied, in having regard to the grievors' actions, that the Company violated article 16.03 of the collective agreement. For these reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR