

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1147

Heard at Montreal, Friday, November 11, 1983

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Application of Letter of Understanding #37 concerning installation of improved draft gear on cabooses.

JOINT STATEMENT OF ISSUE:

The Union grieves, alleging that the Railway has not met the requirements of Letter of Understanding #37 insofar as improved draft gear have not been installed on the number of cabooses stated in the letter.

The Railway contends that because of the sharp decline in the demand for iron ore, the number of ore trains have been so reduced that there are now a sufficient number of cabooses in service with the improved draft gear to meet the requirements now and for the foreseeable future.

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

During the negotiations of the collective agreement entered into on July 27, 1978 the parties adopted the following letter of understanding:

July 7, 1978

Mr. Jacques Roy
General Chairman
United Transportation Union, Local 1843 (T)
P.O. Box 1017, Sept-Îles, Québec

Dear Sir:

Subject: "Improved Draft Gear"

Within six months of the signature date of the collective agreement, the Railway will purchase improved draft gear for one (1) caboose to be used on an experimental basis for six months. Based on the results of the experimentation period, three (3) improved draft gears and beginning in January 1981, four (4) improved draft gears for cabooses per year.

Yours truly,

R. L. Beaulieu
Superintendent, Labour Relations

During the negotiations of the collective agreement entered into on May 24, 1981, the parties entered into the following letter of understanding:

April 24, 1981

Mr. L. Lavoie
General Chairman, Local 1843 (T)
United Transportation Union
P.O. Box 1017, Sept-Îles, Québec

Subject: Improved draft gear

Dear Sir:

As discussed during negotiations the Railway agrees to continue its programme on improved draft gear for cabooses at the rate of four (4) per year in 1981, 1982 and 1983.

Yours truly,

R. L. Beaulieu
Manager, Labour Relations

Commencing in January 1981 the Company had installed or was in the process of installing twelve "improved draft gears" to cabooses as required under both letters of understanding. In other words, these installations were made pursuant to the Company's obligation to purchase this equipment. On December 31, 1983 the Company anticipates that its obligations will have been met. The Company concedes that four improved draft gears were purchased before January 1, 1981 and eight were purchased thereafter.

The Trade Union perceives that the Company's obligation, having regard to the combined effect of both letters of understanding, requires it to purchase and install sixteen "improved draft gears" by December 31, 1983. Accordingly the Company is alleged to be remiss in its perception of its obligation under the two letters.

It is common ground that the extent of the Company's obligation under the letter of understanding dated April 24, 1981 is very much governed by the obligation that it assumed under the original letter. Pursuant to the original letter, the Company was required within six months of entering into the collective agreement (January 27, 1978) to purchase one improved draft gear. Following this purchase a six month experimentation period was allowed to determine the equipment's efficacy. After the experimentation period lapsed the Company, a short period thereafter,

was obliged to purchase three additional improved draft gears. Then, "beginning in January 1981" the Company undertook to purchase four draft gears in each subsequent year.

The letter of understanding dated April 24, 1981, by its express language obliged the Company "to continue" the programme it had undertaken in the original letter with respect to the purchase of improved draft gears for cabooses "at the rate of four (4) per year in 1981, 1982 and 1983".

The parties' dispute turns on the extent of the Company's obligation, having regard to the combined effect of both letters of understanding, to purchase improved draft gears in 1981. The parties agree that the Company's obligation was to purchase four draft gears per year in 1982 and 1983. The Company insists that an overlap or duplication exists under the two letters which requires it merely to install four (4) draft gears by 1981. The Trade Union discerns the presence of no such difficulty. It insists that the Company's obligation was to increase its purchases in 1981 by four from the four draft gears hitherto purchased under the original letter.

The Board is satisfied that pursuant to the parties' initial letter of understanding the Company's clear obligation both during the period of experimentation and thereafter was to purchase four improved draft gears. The requirements imposed by that letter then obliged the Company "beginning in January 1981" to purchase four (4) improved draft gears thereafter on an annual basis. The letter of understanding dated April 24, 1981 merely reiterates the Company's obligation to continue the existing programme by purchasing four (4) improved draft gears annually in 1981, 1982 and 1983. That is to say, the parties under the second letter of understanding have merely reaffirmed the obligation undertaken by the Company under the first letter. Accordingly I am satisfied that pursuant to the letter, dated April 24, 1981, the Company was required to purchase twelve draft gears for the years 1981, 1982 and 1983. And when that requirement is taken into consideration with the obligation undertaken during the experimentation period and thereafter the combined effect of both letters of understanding was to require the Company to purchase sixteen (16) improved draft gears.

As a result since the design of both letters of understanding was to encourage the installation of improved equipment in order to contribute to the safety and security of the employees in the bargaining unit, I am satisfied that the Company failed to meet its obligation by restricting its purchase of improved draft gears pursuant to the letter of understanding dated April 24, 1981, to eight draft gears for the years 1982 and 1983. It was obliged to purchase four additional improved draft gears in 1981 to comply with its obligation. In accordance with the Trade Union request I therefore declare that the Company was remiss in not complying with the said letter of understanding.

(signed) DAVID H. KATES
ARBITRATOR