CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1242

Heard at Montreal, Wednesday, May 9, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Run-through of trains between Hornepayne and Armstrong, Ontario without a crew change at Nakina, Ontario.

COMPANY STATEMENT OF ISSUE:

On 30 September 1982, the Company served notice pursuant to Article 114 of Agreement 1.1 of its intentions to operate all trains between Hornepayne and Armstrong without a crew change at Nakina, Ontario.

The Company also indicated that coincidentally all Memoranda and Understandings which may be in conflict with the foregoing intentions would be cancelled.

The Union has subsequently taken the position that: **(1)** The Memorandum of Agreement between the Union and the Company dated 23 November 1973 might be applicable to prevent the Company from making the proposed changes. **(2)** Any employee named in Appendix "A" of the Memorandum of Agreement regardless of their seniority date is "protected" by the said Memorandum of Agreement.

The Company position is that: **(1)** It has the right to make material changes, (including the intended run-through at Nakina, Ontario) as specified in the said Article 114 notice and in accordance with Collective Agreement 1.1. **(2)** Alternatively and in the circumstances, the Union is precluded, (estopped) from taking a contrary position in this regard. **(3)** In any event, the only employees who may be considered "protected" under Appendix "A" (and perhaps entitled to benefits under Article 114) are Messrs. A. K. Walter, J. N. Sanderson, R. R. McKay, R. E. Currier, R. E. V. Harris, and no other employees.

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT LABOUR RELATIONS.

There appeared on behalf of the Company:

L. L. Band, Q.C.	– Solicitor, Toronto
W. A. McLeish	– Manager Labour Relations, Toronto
M. Delgreco	– Senior Manager Labour Relations, Montreal
J. R. Gilman	– Senior Manager Labour Relations, Montreal
P. G. Drew	– Labour Relations Officer, Toronto
G. L. Edwards	– Labour Relations Officer, Toronto
M. R. Robinson	– Regional Transportation Officer, Toronto

J. A. Sebesta – Co-ordinator Transportation - Special Projects, Montreal
B. Noble – Student-at-Law, Toronto

And on behalf of the Brotherhood:

M. Wright, Q.C. – Ottawa
J. B. Adair – Canadian Director, Ottawa
E. J. Davis – Canadian Director, Retired
J. P. Riccucci – Executive Assistant to Canadian Director, Montreal
P. M. Mandziak – General Chairman, St. Thomas
J. W. Konkin – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

By letter dated May 2, 1984, the Canadian Railway Office of Arbitration was advised that the Company has withdrawn Items (1) and (2) of its Statement of Issue. As a result only Item (3) remained to be resolved at arbitration.

The only issue raised herein is whether all employees whose names are affixed to Schedule "A" of the Memorandum of Agreement dated November 23, 1973, are entitled to the work guarantees contained in Section 4(c) and (d) of that document. The parties are also agreed that the only employees who appear on Schedule "A" and whose claims are in dispute are Messrs. Hakansson, Tees and Nadon.

The background circumstances that precipitated the parties' entering into the Memorandum of Agreement need not be elaborated in this decision. It suffices to say that the parties' objective was to allow the Company some flexibility in meeting its manpower requirements for locomotive engineers at the Nakina terminal and at the same time to provide a measure of certainty to those locomotive engineers who either elected (see Section 1(a)) or who were deemed to have elected (see Section 1.3) to make Nakina their home terminal.

In this particular regard Messrs. Hakansson, Tees and Nadon refrained from making an election under Section 1(a) and accordingly were deemed pursuant to Section 1.3 to have rejected the options available to them under the Memorandum and were "considered" as locomotive engineer at Nakina "after the implementation of this agreement". It is of some importance to specify the other options that were available to the grievors. Had they elected to transfer to Hornepayne then they would have received premium of $6,500.00 in satisfaction of the terms of Article 114 of the collective agreement. (See Section 2(b), (d), (f)). Had they elected to transfer elsewhere within their seniority district (provided the Company considered them surplus to requirements) then they would have been entitled to the benefits provided in paragraph 114.2 and 114.3 of Article 114 of Agreement 1.1 (See Section 5(a)).

It is also of some significance to note that the grievors retained certain job security benefits at Nakina arising out of the job training agreements entered into between the Company and the Trade Union. In Mr. Hakansson's case he was the beneficiary of what was referred to as "The Silver Seven Agreement" which provided that his seniority upon qualification as locomotive engineer was "on or about" September 23, 1968. Should the manpower requirements for locomotive engineers become redundant at Nakina then Mr. Hakansson could revert to performing "Second Engineers functions". The relevant provisions of the Memorandum of Agreement establishing Mr. Hakansson's seniority reads as follows:

> It is agreed that:
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> 1. The employees listed below who are now engaged in the training programme for locomotive engineers on the 6th Seniority District will, if they so elect and, if qualified in keeping with Company requirements, establish seniority as locomotive engineers on or about September 23, 1968 and at the same time they will be placed at the bottom of the locomotive engineers' seniority list in order of previous service with the Company as follows:
>
> 6 names
>
> A. B. Hakansson

In Mr. Tees' and Nadon's case they acquired training as locomotive engineers pursuant to a different training agreement entered into by the parties. It suffices to say that upon their qualifying as locomotive engineers in May, 1973, they acquired seniority dates effective January 1, 1974. Moreover, both Messrs. Tees and Nadon retained their

seniority privileges as "trainmen" upon acceding to the BLE bargaining unit. Their rights "to bump" into positions at Nakina under the UTU agreement were preserved in the event of their future redundancy as locomotive engineers.

Since the grievors were considered as "Nakina locomotive engineers" after the implementation of the Memorandum of Agreement, what rights were they guaranteed? In this regard the relevant provisions of Section 4 read as follows:

> (a) Subject to the provisions of this agreement, Nakina will cease to be a Home Station for locomotive engineers effective on the date specified by the Company pursuant to the provision of Section 6(a), except for those locomotive engineers listed in Appendix A who elect to continue manning trains out of Nakina, Ontario.
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> ...
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> (c) Subject to the provisions of paragraph (d), a number of assignments will be maintained at Nakina, consistent with traffic offering, to be advertised and filled by those locomotive engineers who have a seniority date prior to 23 September 1968 and who have elected to continue manning trains out of Nakina as provided under paragraph (a).
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> (d) If reasonable miles cannot be provided for the locomotive engineers referred to in (c) above, arrangements will be made between the appropriate Company Officer and the Local Chairman concerned, to assign a number of such locomotive engineers to work between Nakina and Hornepayne, Ontario, to the extent necessary to provide reasonable miles, which are considered to mean those miles provided by the application of Article 108 of Agreement 1.1.

The Company's Counsel submitted that Section 4 (c) governed the grievor's entitlements to the work guarantee benefits provided in Section 4 (d). Since the language of Section 4 (C) imposes the requirement that the grievors must hold a seniority date as locomotive engineers "prior to 23 September 1968", they simply did not qualify for these benefits. Several cases were referred by Counsel in support of the proposition that where the language of a document on its face is clear and unambiguous the plain meaning ought to prevail. Moreover, I was urged by Counsel to refrain from attaching an interpretation to Section 4(c) that would amount to an amendment or modification of its content.

Counsel for the Trade Union, on the other hand, insisted that the grievors, despite the seniority requirement of Section 4 (c), were entitled to the benefits under Section 4 (d). It was submitted that so long as the grievors manned trains out of Nakina "after the implementation of the agreement" and so long as they have never been declared as surplus to the requirements at Nakina as provided in Section 5 (a) of the Memorandum, they were eligible to receive the benefits under Section 4 (c). In support of this particular submission Counsel placed emphasis on Section 5 (b):

> (b) If locomotive engineers covered by paragraph (a) of this Section are considered as not being surplus to the requirements at Nakina, they will not be released and will be considered as locomotive engineers covered by the provisions of paragraph (c) of Section 4.

In resolving this dispute I agree with the interpretation advanced by the Employer's Counsel with respect to the language of Section 4 (c). So long as a locomotive engineer, despite his placement on Schedule "A", does not hold a seniority date prior to September 23, 1968, that employee does not qualify for the work guarantee benefits provided under Section 4 (d). It is that simple. The language is clear, straightforward and definitive.

It is my view, however, that Mr. Hakansson meets the requirements of having a seniority date prior to September 23, 1968. A careful reading of the Memorandum of Agreement establishing Mr. Hakansson's seniority shows that he holds seniority "on or about September 23, 1968". That is to say, his seniority is not necessarily established "on" September 23, 1968, as the Employer maintained. Rather, his seniority may also be construed to be designated, having regard to the term "on or about", either immediately before or immediately after September 23, 1968, or both. If his seniority was intended to be anchored "on" September 23, 1968, the Memorandum of Agreement would have said so. But since his seniority date may be interpreted to have been established both immediately before and immediately after that date I am satisfied that Mr. Hakansson's seniority may be designated, for purposes of the receipt of the benefits under Section 4 (d), as being "prior to September 23, 1968".

On the other hand, Messrs. Tees and Nadon clearly do not qualify for these benefits as their seniority date was established as of January 1, 1974. In this regard, I am satisfied that the Trade Union's submissions on their behalf fall

short of the Agreement's clear intention Quite clearly at no time did Mr. Tees or Mr. Nadon elect to man trains in a terminal in their seniority district outside of Nakina or Hornepayne as contemplated under Section 5 (a) of the Memorandum. At no time, accordingly, were they considered by the Employer as not being surplus to the requirements at Nakina "that would entitle them to the benefits", as Section 5 (b) contemplates, under Section 4 (c). Indeed, Section 5 (b) has absolutely no relevance to their status for purposes of securing benefits under Section 4.

In short, whether intended or not, the work protection guarantee at Nakina that might be applied to both Messrs. Tees and Nadon are restricted to their seniority rights under the UTU Agreement. In the event of their potential redundancy as locomotive engineers at Nakina it still remains their privilege to "bump into" a position at Nakina in another bargaining unit.

In sum, based on the clear and plain language of Section 4 (c), I adopt the Employer's interpretation as my own with respect to the grievor's entitlement to the benefits under Section 4 (d). In this regard because Mr. Hakansson holds a seniority date "on or about" September 23, 1968, I am satisfied that he meets the qualifications for entitlement to the work guarantees provided under Section 4 (d). In Messrs. Tees' and Nadon's situation, they clearly fail to qualify.

Needless to say, in having regard to the interpretation I have attached to the language of Section 4 (c), I find no "ambiguity" in that provision that would warrant the admission of extrinsic evidence.

As a result this grievance is partly successful. I shall remain seized with respect to implementation of Mr. Hakansson's award. In all other respects the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR