

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**SUPPLEMENTARY AWARD TO**

**CASE 1248**

Heard at Montreal, Tuesday, September 11, 1984

Concerning

**QUEBEC NORTH SHORE & LABRADOR RAILWAY**

and

**UNITED TRANSPORTATION UNION**

(Decided on the basis of the parties' written submissions)

There appeared on behalf of the Company:

M. Gauthier	- Counsel, Sept Iles
R. L. Beaulieu	- Manager, Labour Relations, Sept Iles
K. Turriff	- Superintendent Train Movement, Sept Iles
T. McElroy	- Superintendent Maintenance of Way, Sept Iles
M. Tardif	- Assistant, Labour Relations, Sept Iles
J. Sirois	- Trainmaster, Sept Iles

And on behalf of the Union:

R. Cleary	- Counsel
J-M St. Pierre	- Vice-Chairman, Sept Iles
J. Roy	- General Chairman, Sept Iles

## **AWARD OF THE ARBITRATOR**

The Company appears to have encountered some difficulty in the implementation of my initial decision in this matter. Such difficulty was not unanticipated. My conclusions with respect to the disposition of the parties' dispute is summarized in the final paragraph:

In sum, I am of the view that the Company's use of non bargaining unit personnel in the operation of the Loram and Sperry vehicles should be restricted to the uses for which those vehicles were designed even when operating under the TOP regulations. However, to the extent those vehicles have been used for purposes that are consistent with the operation of a "train", the Company is obliged to use conductor or other bargaining unit personnel. The Company's concession that the two vehicles in question while operating under Form "C" clearances operated as "trains" has convinced me that a portion of the time these same vehicles were used after February 14, 1983, they were used as "trains" even when operating under TOP regulation. The onus of distinguishing the uses to which those vehicles have been made since February 14, 1983 rests with the Company. As a result I shall remain seized of all outstanding issues inclusive of compensation in the event of difficulty in the implementation of this decision.

Of course, the problem imposed upon the Company is the task of differentiating the functions performed by the Loram Rail Grinder and the Sperry Rail Testing Car for which it was designed from the functions that are consistent with the operation of a train. And, indeed, the manner in which the Company has elected to operate these vehicles through successive recourse to TOP regulations renders the task of making this distinction for practical purposes impossible. It is clear that so long as the vehicles are used in this manner the integral operation of both functions simultaneously is unavoidable.

Accordingly, the only practical solution to this conundrum is to make an order directing monetary compensation for that aspect of the vehicles function that can best be described as an operation consistent with a train. In making what I consider to be an appropriate monetary award, I am not requiring the Company to assign Trade Union personnel to each vehicle. I accept the Company's representation that this would be a totally impractical, if not absurd, exercise. The order for compensation is directed to the Trade Union in trust for the benefit of its membership on the following basis:

- (i) Effective February 14, 1983, the Company shall compensate the Trade Union at the rate of one half the hourly rate paid the conductor for the period of time in which "The Loram Grinder" has been used;
- (ii) Effective February 14, 1983, the Company shall compensate the Trade Union at the rate of one half the hourly rate paid the conductor and "flagman" for the period of time in which "The Sperry Rail Testing Car" has been used.

I shall remain seized for the purpose of implementation of both directives.

**(signed) DAVID H. KATES**  
**ARBITRATOR**