

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1847

Heard at Montreal, Wednesday, 9 November 1988

Concerning

### ONTARIO NORTHLAND RAILWAY

And

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Wage claim on behalf of Track Maintenance Foreman, Mr. Peter Sutherland of Englehart Yard, claiming the rate of pay for a gang of eight men or over.

#### **JOINT STATEMENT OF ISSUE:**

The contention of the Brotherhood is that the Company violated Article 26.1 of Agreement 7.1 as well as all other applicable rules when Mr. Sutherland's rate of pay was reduced from \$14.886 to \$14.404 by the Company.

The Company denies the Brotherhood's contention.

#### **FOR THE BROTHERHOOD:**

**(SGD.) G. SCHNEIDER**  
SYSTEM FEDERATION GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) P. A. DYMENT**  
GENERAL MANAGER

There appeared on behalf of the Company:

M. Restoule – Labour Relations Officer, North Bay  
G. Payne – Chief Engineer, North Bay

And on behalf of the Brotherhood:

M. Gottheil – Counsel, Assistant to the Vice-President, Ottawa  
G. Schneider – System Federation General Chairman, Winnipeg

## **AWARD OF THE ARBITRATOR**

On the basis of the material tabled, the Arbitrator is satisfied that it has been the consistent practice of the Company to treat Machine Operators as being under the supervision of a Track Maintenance Foreman. For the purposes of Article 26.1 of the Collective Agreement Machine Operators report twice daily to the Track Maintenance Foreman and, prior to the instant grievance, the Track Maintenance Foreman was responsible for signing their time sheets. It also appears to be beyond dispute that while Machine Operators are working on a section of track under the jurisdiction of a Track Maintenance Foreman it is that Foreman's protection which governs them. In further support of its claim the Union tabled a copy of a job posting, dated October 27, 1983, for certain positions of Snow Removal Machinery Operators. The job posting expressly states, in part:

Successful applicants will work under the direction of the local Track Maintenance Foreman and will work as Track Maintainers at the Machine Operators' rate when not required to operate the machines. Track Maintenance Foremen in charge must sign the machine operator's time sheets.

It appears that the Company has formed the opinion that it is no longer necessary to have Machine Operators supervised by a Track Maintenance Foreman. Whatever merit that view may have, the Arbitrator must conclude that for the purposes of the application of Article 26.1 of the Collective Agreement it was the common intention of the parties that in determining whether a Track Maintenance Foreman had eight or more employees under his charge, it was accepted and understood that Machine Operators would be included in the count. While it may be open to the Company to raise alternative language or some different application of that article of the Collective Agreement in a future round of negotiations, it cannot now unilaterally depart from a mutually understood application of the provision that is supported by a long and consistent practice.

For the foregoing reasons the grievance must be allowed. I retain jurisdiction in the event of any dispute between the parties with respect to the calculation of compensation owing to the grievor, or any other matter relating to the interpretation or implementation of this award.

November 10, 1988

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**