

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1985

Heard at Montreal, Thursday, 14 December 1989

Concerning

ALGOMA CENTRAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

JOINT STATEMENT OF ISSUE:

The Union contends that the Company's interpretation of a June 1, 1979 letter is improper and that pay rates for Locomotive Engineers should be revised as a result of a reduced crew agreement negotiated with the United Transportation Union to maintain the rate relationship between a Conductor and a Locomotive Engineer.

The Company holds that they are not in violation of their June 1, 1979 letter and rejects the Union's claim.

FOR THE BROTHERHOOD:

(SGD) J. D. PICKLE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) V. E. HUPKA
FOR: VICE-PRESIDENT – RAIL

There appeared on behalf of the Company:

V. E. Hupka	– Manager, Industrial Relations, Sault Ste. Marie
N. L. Mills	– Superintendent, Transportation, Sault Ste. Marie
J. N. Gardner	– Labour Relations Officer, Sault Ste. Marie
D. C. Fraleigh	– Assistant Vice-President, Labour Relations, CNR, Montreal

And on behalf of the Brotherhood:

Jim Shields	– Counsel, Ottawa
Jack D. Pickle	– General Chairman, Sarnia
Cliff Hamilton	– Vice-General, Montreal

AWARD OF THE ARBITRATOR

The material establishes that on June 1, 1979 the Company made an agreed undertaking to the Brotherhood in the terms of the following letter:

Mr. H. D. Streich,
Local Chairman,
Brotherhood of Locomotive Engineers,
125 Estelle Street,
Sault Ste. Marie, Ontario

Dear Sir:

During contract negotiations between the Company and the Brotherhood lengthy discussions were held on your proposal concerning the maintenance of the rate relationship between a Conductor and a Locomotive Engineer.

In our discussions we reviewed the results of discussions held between the Canadian National Railway Company and the Brotherhood of Locomotive Engineers and determined that these discussions were prompted on the basis of reduced freight crews and the possibility of a change to the basic through freight rate resulting therefrom which was not the case.

We advised you and confirm that if the Company should, at some future date, agree to change basic rates of pay or provide a so-called "lonesome pay" allowance for Trainmen employed in reduced crew operations in through freight service the Company was prepared to meet with you, at your request, to revise rates of pay so affected in order to maintain the present rate relationship that may have been distorted as a result of such rate of pay adjustment or the payment of a so-called "lonesome pay" allowance.

Yours truly,

V. E. Hupka,

The record reveals that in June of 1989 the Company reached an agreement with the United Transportation Union respecting the introduction of reduced freight crews effective July 1, 1989. Part of that agreement included Article 70.9 which is as follows:

70.9 For each tour of duty worked as a reduced crew, the Conductor and Brakeman who are protected freight men, will each be paid a reducible crew benefit equal to 15% of the gross earnings of the Brakeman's position not filled. The sum of these two benefits will be 30% of the gross earnings of the Brakeman's position not filled."

It is not suggested that the foregoing provision involves any change in the basic through freight rate paid to trainmen. The issue then becomes whether it is a "lonesome pay" allowance within the meaning of the Letter of Understanding of June 1, 1979. After a careful review of the material filed, I am satisfied that it is not. The concept of "lonesome pay" appears to have originated in the United States, as an allowance to be paid to enginemen represented by the Brotherhood who, after 1964, would be operating without a fireman. With the exception of certain international runs, this type of allowance does not appear to have found its way into the system of wages paid by Canadian railways.

Reduced freight crews were first introduced into the Canadian National Railway some ten years ago. A letter identical to the Letter of Understanding of June 1, 1979 between these parties was then entered into between CN and the Brotherhood, dated May 4, 1979. When its running crews were reduced, CN agreed to pay to trainmen a special productivity allowance, calculated at the end of each year based on 25% of the gross earnings of the eliminated brakeman's position. Protected freightmen were entitled to draw from the fund annually, in addition to having the benefit of an early retirement provision. Similar arrangements, with slight differences not material to this dispute, were put into effect at CP Rail and within the Ontario Northland Railway. The special payments established within all three railways have consistently been viewed as a form of productivity sharing, whereby the protected trainmen have had an opportunity, for a fixed period of time set at 10 years, to benefit from a share in the savings afforded to the Company by the elimination of one brakeman from what was previously a four person running crew. It is not

disputed that those payments never precipitated a grievance by the Brotherhood as constituting a "lonesome pay" allowance which would trigger the operation of the Letter of Understanding.

The material discloses that the arrangement established by the Algoma Central Railway differs slightly from that of the other three railways. The benefit payable is not limited in time, although it is grandfathered. It is payable only to trainmen with a seniority date of January 1, 1989 or earlier. It ceases to be payable when any employees in that protected category are no longer employed by the Company or no longer work on reduced freight crews. It is not payable to employees hired after January 1, 1989, whether they work on a reduced freight crew or otherwise. The amount of the payment, which the Company also characterizes as a productivity sharing benefit, is set at 30% of the pay for the position of the brakeman which is not filled on a reduced crew. It appears that the slightly higher pegging of the rate is in compensation for the fact that the Company's plan does not include an early retirement provision.

In resolving this dispute it must be appreciated that the parties intended a measure of consistency in the application of the Letter of Understanding of June 1, 1979 as it relates to the identical Letter of Understanding operating within the other railways, and in particular at CN. While the arrangements at the other railways differ slightly among themselves, and as compared to that of the Company in the instant case, they are all based on the general concept of the sharing of productivity gains. In the Arbitrator's view Counsel for the Brotherhood correctly notes that the monies payable under the Company's plan are different from those payable by the other railways to the extent that they are tied directly to miles travelled by the employees. That, however, does not suffice, in my opinion, to fairly characterize these payments as "lonesome pay" as that concept must be understood.

The Letter of Understanding of June 1, 1979 appears to speak to forms of payment which are general to all employees, referring as it does to "... a change to the basic through freight rate ..." and a "... 'lonesome pay' allowance for trainmen employed in reduced crew operations in through freight service ...". The foregoing language suggests that what is addressed is a payment which, without qualification, would apply to all trainmen in the service described. That, however, is not what was effected by the introduction of the productivity sharing formula in this case. Although it is characterized internally as trainmen's premium rates of pay by the Company, it is in fact not available to all trainmen, being limited only to those hired prior to January 1, 1989. To the extent, therefore, that there will be trainmen operating without the benefit of the premium, the traditional differential between the rates paid to enginemen and those paid to trainmen will be preserved. If it were otherwise, if the Brotherhood's position were accepted, by dint of attrition over time, with the gradual departure or retirement of grandfathered trainmen, enginemen would gain an advantage in their wage differential not contemplated by the Letter of June 1, 1979.

For the foregoing reasons I am satisfied that the Letter of Understanding of June 1, 1979 intended consistency in the treatment of the differential between enginemen and trainmen as between the Company and other railways, and further that it intended by the term "lonesome pay" to refer to a benefit or allowance of general application, and not to a productivity sharing formula available only to a limited number of trainmen. As no violation of the Letter of Understanding is disclosed, the grievance must be dismissed.

December 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR