

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2248

Heard at Montreal, Tuesday, 14 April 1992

concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Rest enroute.

JOINT STATEMENT OF ISSUE:

The Union claims that the Company violated articles 16.03, 16.04, 16.04 a), 16.04 b), 16.07, 17.01, 17.02 and 33 of the collective agreement in refusing the crew of A246 to book rest enroute and requests the removal of the 20 demerits assessed B. Lebel.

The Company rejected the grievance because Mr. Lebel refused to continue to his destination with one locomotive which is a violation of article 16.04 b)

FOR THE UNION:

FOR THE COMPANY:

(SGN) B. ARSENAULT

(SGN) A. BELLIVEAU

GENERAL CHAIRMAN

MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo

Counsel, Montreal

A. Belliveau

Manager, Human Resources, Sept-Iles

K. Turiff

Superintendent, Sept-Iles

R. Plourde

Superintendent, Sept-Iles

J. Brunet

Human Resources Officer, Sept-Iles

And on behalf of the Union:

R. Cleary

Counsel, Montreal

A. Arsenault

General Chairman, Sept-Iles

F. Locke

Local Chairman, Labrador City

S. Callaghan

Representative, Locomotive Engineers, Sept-Iles B.
Lebel

Grievor

AWARD OF THE ARBITRATOR

The Company submits that the 20 demerits assessed to the grievor's file were justified by reason of his refusal to complete his run as far as Mai and of his alleged violation of the provisions of article 16.04 of the collective agreement.

It is common ground that, on the day in question, Mr. Lebel had completed ten hours on duty at 07:30 and that at 06:24 he had notified the dispatcher that he would be taking his rest after ten hours on duty. At 07:49, after several radio conversations, he told the Train Coordinator, Mr. Keith Turiff:

... Send someone to get me, I am not able to continue, I have told you this all along, Keith, it's not complicated, I am no longer able to continue.

[translation]

The grievor's evidence reveals that he had been called for Train W--246 for 21:30, June 21, 1991. His train arrived at Eric heading southbound at 07:55. The statement of Mr. Lebel establishes, without contradiction, that the day before he booked rest, which he took at the bunkhouse in Mai, in order to sleep during the day. Because of the noise made by a crane which was working near the bunkhouse and the helicopters which took off from that site, he had difficulty sleeping, and obtained only 2 hours and 30 minutes of sleep. In light of the evidence, the Arbitrator accepts that, on the morning in question, Mr. Lebel suffered from fatigue, that he acted in good faith when describing his physical incapacity and that his concerns regarding the danger which he would run if he remained at the control of his locomotive were reasonable.

The grievance must be resolved by the application of articles 16.03 and 16.04 b) in the circumstances. Those articles read as follows: 16.03

Employees may book rest after ten (10) or more hours on duty by giving the dispatcher at least one (1) hour's notice along with the number of hours of rest desired. If the dispatcher will provide a satisfactory run to the destination point, arrangements may be made to continue trip. The employee will be judge of his own condition. Rest booked must be in even hours and cannot be more than nine (9) hours or less than six (6) hours. Rest period will be deducted in computing overtime.

16.04 b)

In circumstances where proper notice of rest desired has been given and ten (10) hours on duty have expired and sleeping accommodation cannot be provided or eating facilities are not available, the employee, if relief is not provided, or arrangements have not been made by the dispatcher to provide a satisfactory run to destination, will be run to a point where sleeping and eating facilities are available or to the point of destination, light engine.

The importance of these articles relating to the security of the Company's operations and to the well-being of its employees is well recognized, as well the importance of the fundamental right of an employee to refuse to work for legitimate reasons of fatigue. (See CROA 1759.) In the instant case, the Arbitrator must accept the claim of Counsel for the Union which emphasizes that Mr. Turiff never gave Mr. Lebel an order to drop his train and return to Mai on the locomotive ("light engine"). On the contrary, the Train Coordinator insisted that the locomotive engineer complete the movement of his train as far as Mai. I am equally of the opinion that the relief requested was not impossible in the circumstances, in spite of the evidence to that effect, even if this involved a certain amount of inconvenience to the Employer. For these reasons, the Arbitrator cannot accept the claim of the Company that there was any violation of the terms of article 16.04 b).

The grievance is therefore allowed. The Arbitrator orders that the twenty demerits assessed the discipline record of Mr. Lebel be erased.

April 16, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR