

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2325

Heard at Montreal, Wednesday, 10 February 1993

concerning

**ONTARIO NORTHLAND RAILWAY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

Expenses claimed by Locomotive Engineer J. Borden under Article 42.6 of Agreement No. 8.

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

The locomotive engineers' spare board at Englehart was depleted. The Company required one more engineer on the Englehart Subdivision. Mr. Borden was transferred from North Bay to Englehart. The Brotherhood contends that he should receive the allowance in Article 42.6. The Company rejected the claim.

### **FOR THE BROTHERHOOD:**

### **FOR THE COMPANY:**

**(SGD.) B. E. WOOD**

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

**GENERAL CHAIRMAN**

**PRESIDENT**

There appeared on behalf of the Company:

- M. J. Restoule – Manager, Labour Relations, North Bay
- J. Thib – Superintendant Train Operations, North Bay

And on behalf of the Brotherhood:

- B. E. Wood – General Chairman, Quebec
- G. Hallé – National Vice-President, Ottawa
- R. Lebel – General Chairperson, UTU, Quebec
- J. Collet – Secretary Treasurer, UTU, Quebec

## AWARD OF THE ARBITRATOR

The Brotherhood's claim is based on the application of articles 42.6 and 43.6 of the collective agreement which provide as follows:

**42.6** Locomotive engineers who protect service in accordance with Articles 42.3 and 43.6 will be allowed \$14.00 per day for meals where such are not provided by the company, or at company expense. The allowance will be paid for each calendar day such engineer works, or is available for work, at, or out of, the point where the shortage exists provided such point is not his normal place of residence. This paragraph does not apply to locomotive engineers subsequently exercising seniority to another home terminal.

NOTE: In the application of this paragraph the payment of the daily allowance shall also apply to locomotive engineers who are required to learn the road at the point where the shortage exists.

**43.6** Should a shortage of engineers exist at North Bay, or Englehart, the railway reserves the right to transfer, temporarily, a sufficient number of engineers to protect the service. Men so transferred will be permitted to return to their home stations as soon as it can be shown that there is a sufficient number of men in the respective classifications at the away-from-home point to protect the service. When engineers are required to leave home station, the junior engineer not working a such will be required to go.

It is common ground that at the time of the shortage of locomotive engineers at Englehart the grievor, Locomotive Engineer J. Borden, was working as a trainman in North Bay terminal. He was forced to go to Englehart to protect the spareboard, as he was then the only qualified employee available to do so. The Brotherhood submits that the grievor was in fact forced to Englehart by the operation of article 43.6. It argues that he falls squarely within the final sentence of that provision which states "When engineers are required to leave home station, the junior engineer not working a such will be required to go."

The Brotherhood submits that Mr. Borden falls squarely within the contemplation of the above sentence. He was, at the time in question, the junior qualified engineer not working as an engineer, and based in North Bay. In the Arbitrator's view the Brotherhood's interpretation is more persuasive than that advanced by the Company. It argues that the grievor was not forced to Englehart by the operation of article 43.6, but rather that he went there by the natural operation of the seniority list. I have substantial difficulty with that submission. Whatever classification Mr. Borden can be said to have held, it does not appear disputed that his home station was North Bay and that for him Englehart would be the "... the away-from-home point" within the contemplation of article 43.6 of the agreement.

Nor can I accept the suggestion of the Company that the phrase "... not working as such" does not refer to trainmen with engineers' qualifications who are assigned as trainmen, but rather to locomotive engineers who are on a spareboard and not currently on a specific assignment. Words are to be given their normal grammatical sense, and in my view "as such" must be interpreted so that the sentence reads, in part, "the junior engineer not working as an engineer will be required to go." This, in the Arbitrator's view, is the logical interpretation to be given to the words of article 43.6 and indeed appears to be consistent with practice elsewhere in the railway industry.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the expenses claimed by Locomotive Engineer J. Borden be paid forthwith.

February 12, 1993

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