

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2568

Heard in Montreal, Tuesday, 10 January 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Claim for maintenance of earnings in favour of Mr. J. Gagné.

JOINT STATEMENT OF ISSUE:

Mr. Gagné is entitled to a maintenance of earnings for pay periods 19 and 20, August 20 to September 24, 1992, in accordance with the arbitral award concerning freight crew consists dated June 29, 1992. Mr. Gagné grieves the non-recognition of his entitlement to this maintenance of earnings for the period during which he occupied the position of locomotive engineer.

The Union claims the amount lost by virtue of Note 2), paragraph 8.5, article 8, of the memorandum of agreement of June 29, 1990, which reads, in part, as follows:

The words "position with the highest earnings at their home terminal to which their seniority and *qualifications* entitle them" and "higher earnings of the position which they are holding" ...

[emphasis added]

The Company rejects the grievance.

FOR THE UNION:

(SGD.) R. LEBEL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. W. COUGHLIN
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Gagné	– System Labour Relations Officer, Montreal
D. C. St-Cyr	– Manager, Labour Relations, St. Lawrence Region, Montreal
C. Provencher	– Officer, Productivity and Labour, Moncton
D. W. Coughlin	– Manager, System Labour Relations, Montreal

And on behalf of the Union:

R. LeBel	General Chairman, Quebec
J. Collet	Local Chairman, Quebec
L. Morency	General Secretary, Quebec
J. Gagné	Grievor

AWARD OF THE ARBITRATOR

The Union claims that the grievor had a right to the maintenance of earnings while he was promoted to locomotive engineer by virtue of the provisions of the article 66.17 of the collective agreement. The Arbitrator cannot accept this position.

It is agreed that, as a locomotive engineer, Mr. Gagné received a salary established under agreement 1.1 of the Brotherhood of Locomotive Engineers. This salary was clearly higher than the salary which he had earned previously when employed under agreement 4.16.

The basis of the right of an employee to receive a maintenance of earnings is found in article 8 of the memorandum of agreement of July 29, 1990, which reads, in part, as follows:

8.2 ... An incumbency for the purposes of maintaining an employee's earnings shall be payable provided:

a) In the exercise of seniority, employees first accept the position with the highest earnings at their home terminal to which their seniority and qualifications entitle them. Employees who fail to accept the position with the highest earnings for which they are senior and qualified, will be considered as occupying such position and the incumbency shall be reduced correspondingly. (See examples of the "blocking system" set out in paragraph 8.6 of this Article 8.) In the event of dispute to the position with the highest earnings to which they must exercise seniority, the Company will so identify.

8.5 NOTE 2) The words "position with the highest earnings at their home terminal to which their seniority and qualifications entitle them" and "higher earnings of the position which they are holding" as used in this article 8 do not include a position on which the earnings are higher than the earnings on the position from which displaced.

In the Arbitrator's view, the logic of the above provision is evident. The parties have agreed that there is no need to give an employee the protection of maintenance of earnings when the employee occupies a position which has a higher salary than he or she received in the position from which displaced. In principle, in these circumstances, the payment of maintenance of earnings would be neither justified nor necessary. I must, therefore, come to the conclusion that as a locomotive engineer promoted under article 66.17 of agreement 4.16 (a circumstance that differs from a call to a tour of duty under article 66.15), the grievor worked as a locomotive engineer under the terms of the collective agreement, that he received a salary higher than the position from which he was displaced and that, by virtue of article 8.2 and Note 2 of article 8.5, he was not entitled to maintenance of earnings for the period in question.

For these reasons the grievance must be dismissed.

January 13, 1995

(signed) MICHEL G. PICHER
ARBITRATOR