

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2649

Heard in Montreal, Wednesday, 12 July 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim by the Union that the Company included requirements on job bulletin that Track Maintainers possess qualifications in excess of those stipulated in Agreement 10.8.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company, in work bulletin MV-16-90 and MV-16A-90, required employees applying for Track Maintainer positions to possess a valid class 5 driver's licence from the Quebec Ministry of Transport.

The Union contends that: **1.)** The Company violated articles 2, 3 and 7 of agreement 10.8 by including in work bulletins MV-16-90 and MV-16A-90 the requirement that Track Maintainers possess a valid class 5 driver's licence from the Quebec Ministry of Transport. **2.)** Article 3.2 of agreement 10.8 is clear about what type of information Bulletins must provide. **3.)** The Company also violated article 18.6 of agreement 10.1 by its unacceptable level of participation in the grievance process.

The Union requests that: These new prerequisites for Track Maintainers be removed and that all Track Maintainers/Trackmen who were refused these positions be made whole with full redress.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. S. Hughes – System Labour Relations Officer, Montreal
C. Lavallée – Track Supervisor, Montreal

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa
D. W. Brown – Senior Counsel, Ottawa
R. A. Bowden – System Federation General Chairman, Ottawa

AWARD OF THE ARBITRATOR

The Brotherhood alleges that the Company has violated the collective agreement by effectively requiring Track Maintainers bidding on certain snow clearance assignments in the Montreal area to have a valid basic driver's licence from the Quebec Ministry of Transport. It is common ground that the bulletins which are the subject of this grievance required track maintainers to possess a class 5 driver's licence, which is the basic licence necessary to operate a car or small truck on public roads and highways in the province. The grievance is brought on behalf Track Maintainer Caron, whom, it is agreed, was unsuccessful in bidding the work in question solely because he lacked a driver's licence. It is not disputed that Mr. Caron remained fully occupied, assigned to other work.

The Brotherhood's first and fundamental position in this grievance is that the Company has exceeded its management's rights in establishing the qualifications in question. It submits that the Company has effectively added qualifications to the position of track maintainer beyond those generally contemplated by the parties and reflected within the terms of their collective agreement. In this regard it refers to article 7 of collective agreement 10.8 which provides, in part, as follows:

7.1(b) Trainee: An employee establishing seniority as a Trackman on or after January 1, 1978. Such employee shall be regarded as a Trainee until he becomes fully qualified as a Track Maintainer, after which he will be regarded as a Regular Employee.

7.14 A Trainee must qualify as a Track Maintainer prior to accumulating two years of cumulative compensated service. A Trainee who fails twice on the Track Maintainer's test during such two-year period will be released from service or in the case of an employee who transferred from another sub-department in Maintenance of Way service, such employee may, seniority permitting, return to his former position.

The Brotherhood stresses that it has never been a requirement of the job of track maintainer to possess any particular class of driver's licence, and that the bulletin in question goes beyond what is contemplated by the position of track maintainer under the terms of the collective agreement. The position of the Brotherhood is that where drivers' licenses form part of the requirements for a given position under the collective agreement, that qualification is generally negotiated between the Company and the Union as part of the terms of their agreement. By way of example the Brotherhood cites the position of Track Maintainer/Truck Driver introduced into collective agreement 10.8 as a separate classification in 1989. It is not disputed that the persons holding that position must be properly licensed in the operation of heavier trucks, such a boom trucks and frog trucks.

Counsel for the Brotherhood also points to the provisions of collective agreement 10.9, negotiated between the parties in respect of the rates of pay and rules for Bridge and Building employees. Article 2 of that collective agreement deals with the qualifications of a number of positions including skilled tradesmen, carpenters, bridgemen, painters and helpers, and make specific reference with respect to each of those positions in terms which indicate that the employee in question might be required to have a valid driver's licence. For example, articles 2.11 and 2.12 read as follows:

Painter

2.11 An employee who is qualified i surface preparation and applications of all kinds of coatings. Such employee is required to order materials, erect scaffolding and work at heights. In addition, he may be required to secure an appropriate driver's licence and a valid "D" Book in the Uniform Code of Operating Rules.

Helper

2.12 An employee assigned to assist other employees specified herein. Such employee may be required to work at heights and secure a valid "D" Book in the Uniform Code of Operating Rules within a two-year period. In addition, he may be required to secure an appropriate driver's licence.

NOTE 1: In the case where a vehicle is assigned to a particular gang, two employees in the gang will be required to hold an appropriate driver's licence. Where two vehicles are assigned to a particular gang three employees will be required to hold an appropriate driver's licence.

Further, the Brotherhood draws to the Arbitrator's attention the provisions of article 27.1 of collective agreement 10.1 which are as follows:

27.1 When additional positions or classifications are created, compensation shall be fixed in conformity with agreed rates for similar positions or by agreement between System Federation General Chairman and officers of the Company.

The Company submits that the establishing of the Track Maintainer/Truck Driver position in 1989 is of no consequence to the grievance at hand. Its representative stresses that the vehicles contemplated in relation to that classification are large trucks which require a specific form of licensing qualification for their operation on public roads or highways. He relates that the reasons for the bulletins which give rise to this grievance stem from a reduction in the size of snow clearance crews, and the need of the Company for greater flexibility in having available to it track maintainers who can operate a light truck during the course of that work. The Company's representative submits that the prior decision of this Office in **CROA 2725** supports the position of the Company, and further makes reference to a decision of Arbitrator B.E. Williams in **Ad Hoc Case No. 228** between the British Columbia Railway Company and the Canadian Union of Transportation Employees, Local No. 6 (Maintenance of Way).

In the Arbitrator's view this grievance must be resolved by recourse to certain basic principles. As a general matter, it is within the prerogatives of the Company to establish qualifications for particular job assignments, subject only to limitations negotiated by the Union within the terms of the collective agreement. It is generally considered by boards of arbitration that an implied term of any collective agreement is that qualifications for a given position must be established by the employer in good faith, and for *bona fide* business purposes having regard to the nature of the work in question, subject always to any specific restrictions found within the language of the collective agreement.

It is not disputed that, by the practice of many years, the daily operations of the Track Maintenance Department necessarily involve the use of many light Company vehicles, and their regular operation by track employees of several classifications, including Track Maintainers, covered by collective agreement 10.8. It is significant, however, to note that the language of collective agreement 10.8 appears to be devoid of any reference to the operation of trucks by any of the classifications of employees found in article 2.6, up to and including foremen. If the Brotherhood's position is correct, namely that no employee can be required to drive a vehicle as a matter of qualification under collective agreement 10.8 unless such qualification has been negotiated within the terms of the collective agreement, it becomes difficult to square its position before the Arbitrator with the reality of day to day operations. If the Brotherhood's position should prevail, it could be argued with the same logic that Track Maintenance Foremen cannot be required to hold a driver's licence as a qualification for their normal bulletined assignments. A proposition so sweeping and so out of keeping with long established reality gives the Arbitrator serious pause.

It is clear that in some circumstances the parties to collective agreement 10.8 have adverted to the operating qualifications of certain employees under the collective agreement. For example, Appendix I of the collective agreement deals with questions and answers bearing, in part, on the qualifications that will be required of employees. Question and answer number 1, dealing with snow plows, reads as follows:

Question: "A" is a section from which a snow plow is operated. Can the Company require that Trackmen, Track Maintainers and Leading Track Maintainers bidding on positions bulletined for this Article [2.5], be qualified or qualify for the operation of snow plows?

Answer: No. The Brotherhood and Management will cooperate in endeavouring to have sufficient qualified employees available to man snow fighting equipment.

As can be seen from the above, the parties generally agreed that management will undertake to have sufficient staff available to operate dedicated track snow removal equipment, and have specifically agreed that bulletins for snow removal work would not require such qualifications of trackmen, track maintainers and leading track maintainers. There is, however, no similar qualification with respect to the possibility of a track maintainer being required to operate an automobile or light truck in other aspects of snow removal operations, such as the clearing of switches. It does not appear disputed that the Company has not, as a general matter, required track maintainers to possess a driver's licence as a qualification for holding that classification. However, the language of agreement 10.8 is devoid of any provision which would specifically limit the ability of the Company to impose such a requirement in respect of particular work assignments or bulletins, in good faith and for valid business reasons. Further, the decision in **CROA 2725** confirmed the ability of the Company to require a Class A driver's licence for a particular track maintainer's position which involved the operation of a heavy dump truck temporarily bulletined in Ottawa.

In the Arbitrator's view the suggestion of the Brotherhood that the appropriate means for staffing switch clearing crews is by the appointment of Track Maintainers/Truck Drivers is not compelling. It is clear that the Track Maintainer/Truck Driver classification was established as a specific amendment of the collective agreement to deal with the operation of larger vehicles such as boom trucks and frog trucks, which require special training and licensing. That, in my view, simply has no application in the case at hand.

Nor can the Arbitrator conclude from the terms of collective agreement 10.9 that the parties are under an implicit understanding that, even in appropriate circumstances, the Company is without the ability to require a particular driver's licence as a qualification in a job bulletin, unless such qualifications are specifically negotiated in the terms of the collective agreement. Again, if that were so it would be arguable that the Company could not require any employee under collective agreement 10.8 ever to operate a car or a light truck, a proposition obviously out of keeping with the history of the agreement and well-established practice. In the Arbitrator's view the references in collective agreement 10.9 to employees in positions such as carpenter, bridgeman or painter possibly being required to have an appropriate driver's licence do not, of themselves, confirm a surrender on the part of the Company of its general prerogatives to establish such qualifications elsewhere, and in particular under other collective agreements governing maintenance of way employees. Language such as that found in article 2.11 of collective agreement 10.9 governing painters is not uncommon as a device to put employees on notice that a particular qualification might commonly be required with the job assignments or bulletins of a given classification. In the Arbitrator's view, the provisions in relation to the helpers' position found in article 2.12 are best understood as an example of limitations on the Company's general discretion specifically negotiated by the Brotherhood for the protection of its members in that classification. No such restriction can be found in collective agreement 10.8, which governs track employees.

It is not disputed that as a general matter many track maintainers do possess driver's licenses, and as a result they are, on occasion, required to operate light trucks as part of their work assignment. The Arbitrator can find nothing within the terms of articles 2, 3 and 7 of collective agreement 10.8 to suggest that the Company cannot, in the appropriate circumstance, in good faith and for valid business purposes, establish the holding of a driver's licence as a legitimate qualification in respect of a particular job bulletin to be held by a track maintainer.

With respect to the snow clearance assignments which are the subject of this grievance, the Employer established the qualification on a basis of good faith, and for an obviously valid business purpose, to ensure that a person qualified to drive would be on duty in any circumstance. That, in my view, is not unreasonable given that a number of two-person crews would be operating, and that some employees might be absent for various reasons. Nor can I find anything within the terms of article 3.2 which would necessarily prohibit the Company from including certain legitimate and justified qualifications within a job bulletin. While that article specifies that bulletins are to show the classification of positions, their location, rates of pay and living accommodation, if any, it must be understood as describing minimal informational requirements. Nothing in that article can fairly be taken as prohibiting the Company from providing further information such as hours of work, rest days or anything else pertinent to a bulletined assignment. Finally, it should be noted that the Brotherhood did not pursue the alleged violation of article 18.6 in the presentation of this grievance.

For all of the foregoing reasons the grievance must be dismissed.

July 14, 1995

(signed) MICHEL G. PICHER
ARBITRATOR