

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2832

Heard in Montreal, Tuesday, 12 March 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Time claims submitted by Locomotive Engineers P. Volmiamitis, D. Whitnall, R. Cole and J. Prosia for payment of "Conductor Only bonuses".

JOINT STATEMENT OF ISSUE:

On various dates in 1994 and 1995, Locomotive Engineers P. Volmiamitis, D. Whitnall, R. Cole and J. Prosia were called to work as locomotive engineer pilots in accordance with article 20 of agreement 1.1.

Thereafter, the grievors claimed payment of "conductor only bonuses" relating to distance and train length allowances – articles 1.8 and 1.11 of agreement 1.1. These claims were declined by the Company.

The Council (BLE) contends that the grievors are entitled to payment of the bonuses claimed as the respective articles preclude payment only when locomotive engineers are deadheading.

The Company disagrees with the position put forth by the Council (BLE) and has declined these claims at step 2 and step 3 of the grievance procedure.

FOR THE COUNCIL:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. W. COUGHLIN
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

- D. A. Watson – Labour Relations Consultant, Montreal
- D. Fournier – Coordinator, Crew Management Centre, Moncton
- G. Search – Assistant Manager, Labour Relations, Toronto
- D. MacKenzie – Labour Relations Officer, Toronto
- J. Krawec – System Transportation Officer, Montreal

And on behalf of the Council:

- C. Hamilton – General Chairman, Toronto

AWARD OF THE ARBITRATOR

The Council claims conductor-only bonuses for work performed by the grievors when they were assigned as pilots. It is not disputed that the employees, who work off a spareboard, were compelled to accept the call to work as pilots, and that in each case the trains to which they were assigned operated conductor-only. The Council submits that it is inequitable, and out of keeping with the provisions of the collective agreement, that the locomotive engineer assigned as a pilot to assist another locomotive engineer unfamiliar with the territory should be paid at a lesser rate, to the extent that the locomotive engineer in charge of the train receives both train length allowance under article 1.8

of the collective agreement and the conductor-only bonus provided under article 1.11 of the collective agreement, while the pilot does not.

The grievance must turn upon the application of article 20.1 of the collective agreement which reads as follows:

20.1 Locomotive engineers acting as pilots will be paid from the time required to report for duty until time of registering off duty on completion of trip or day's work at the rate of pay applicable to the class of power and under conditions pertaining to the class of service piloted, except that articles dealing with inspection time shall not apply.

It appears manifest to the Arbitrator that the locomotive engineer assigned as a pilot is to be paid at the rate of pay applicable to the class of power involved, an issue which is apparently not contentious, and "under the conditions pertaining to the class of service being piloted". It is the latter phrase which gives rise to this dispute. The Council's position is that the phrase "conditions pertaining to" involves a broader interpretation than merely looking to the rate payable to the class of service piloted. In other words, the Council submits that in the case of a locomotive engineer piloting in through freight service, where such service is on a conductor-only basis, that is a condition pertaining to the class of service piloted, and the bonus for conductor-only service should be payable to the pilot.

The Company submits that the pilot should not be paid the bonus relating to conductor-only service, as the absence of a trainman does not substantially impact the burden of the task performed by the pilot. For example, if a train is required to perform switching en route, or other comparable work, the pilot may simply stand by while such work is performed, and bear no additional burden by reason of the absence of a brakeperson. On that basis it submits that the parties did not intend, by the language of article 20.1, to provide to locomotive engineers assigned as pilots additional bonuses such as the train length allowance provided under article 1.8 or the conductor-only bonus of article 1.11 of the collective agreement.

The Arbitrator has some difficulty with the interpretation advanced by the Company in this case. Clearly, if the wording of article 20.1 were that a pilot is to be paid "at the rate of pay applicable to ... the class of service piloted", the employer's position would be compelling. That is not the wording of the article, however. For reasons which they best appreciate, the parties chose to adopt the phrase "at the rate of pay applicable ... **under conditions pertaining to** the class of service piloted". It is trite to say that words contained within a provision of a collective agreement should be taken to have some meaning. In ascribing meaning to the phrase "under conditions pertaining to" the Arbitrator is inclined to view factors such as train length and the absence of a brakeperson as conditions relating to a particular class of service. For example, the heading of article 1.11 reads: "No Assistant Conductor Employed in Through Freight Service". The absence of an assistant conductor would appear to the Arbitrator to describe a condition which can apply to through freight service. Similarly, article 1.8 makes provision for varying train lengths, and related allowances payable in respect of them for "locomotive engineers in any class of freight service ...". Again, it would seem that the parties have considered train length as a compensable condition which can attach to any class of service, and have made specific provision for the rate of pay which is to apply under those conditions.

In the result, the Arbitrator is compelled to prefer the interpretation advanced by the Council in the case at hand. Moreover, from a purposive standpoint, given the Company's acknowledgement that it is not uncommon for a pilot to accompany a train over its entire trip, through a full tour of duty, it would appear equitable, and in keeping with normal expectations, that the pilot be paid at a rate which is no less than the locomotive engineer who has the benefit of the pilot's guidance. That, in my view, is what the language of article 20.1 contemplates.

For the foregoing reasons the grievances are allowed. The Arbitrator directs that the time claims submitted by Locomotive Engineers Volmiamitis, Whitnall, Cole and Prosia be paid, inclusive of train length allowances, and conductor-only bonuses, under article articles 1.8 and 1.11 of collective agreement 1.1.

March 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR