

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3373

Heard in Montreal, Tuesday, 14 October 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor R.J. Nykoluk of Winnipeg, Manitoba for 100 miles run-around on April 16, 2002 as per paragraph 43.2, article 43 of agreement 4.3.

JOINT STATEMENT OF ISSUE:

On Tuesday, April 16, 2002, the grievor was assigned to the Gladstone Subdivision and was first out and available at Dauphin, his away from home terminal, for 12:45.

The Company called a Dauphin based conductor for 12:45 on April 16, 2002 to man train 311 at Glencairn on the Gladstone Subdivision and continue on the Togo Subdivision to Canora, Saskatchewan. The Dauphin home terminalled crew was ordered in straightaway service, Dauphin to Canora via Glencairn.

The Union contends that the Company's call of the Dauphin crew to operate train 311, from Dauphin to Canora via Glencairn, was in violation of paragraph 43.5, article 43 of the 4.3 agreement and that the grievor, R.J. Nykoluk, was entitled to be called for this work assignment and is entitled to the payment of 100 miles.

The Company has declined payment of the claim.

FOR THE UNION:

(SGD.) R. HACKL

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) D. VANCAUWENBERGH

FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Manager, Human Resources, Winnipeg
J. Torchia	– Director, Labour Relations, Edmonton
B. Laidlaw	– Manager, Human Resources, Edmonton
S. Blackmore	– Manager, Human Resources, Edmonton

And on behalf of the Union:

R. Hackl	– Vice-General Chairperson, Edmonton
B. Boechler	– General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

The instant grievance turns on the application of the following articles of the collective agreement:

43.2 Train service employees covered by the provisions of this article, who are ready for duty and runaround will be paid 100 miles for each run around, retaining their original standing on train board.

...

43.5 Train service employees in chain gang crews in unassigned service will be assigned to regular subdivisions, and will be kept on those subdivisions, except in emergency on account of shortage of crews they may be required to go on another subdivision, in which case they must be changed off with the first unassigned train service employees on that subdivision met en route.

43.6 Train service employees arriving at their own subdivision terminal, when train service employees from another subdivision are about to be used, shall change off with said train service employees for the purposes of keeping train service employees on their own respective subdivisions, even though the train service employees about to be used have been called and started to work.

43.7 Paragraphs 43.5 and 43.6 will not be enforced when train service employees require rest.

The Union maintains that Conductor Nykoluk should have been assigned to rescue train 311 at Glencairn on the Gladstone Subdivision. It is common ground that the crew of that train did not complete their run from Winnipeg to Dauphin, by reason of booking rest at Glencairn. Conductor Nykoluk, a Winnipeg based employee working the Gladstone Subdivision was then laying over in Dauphin and, the Union maintains, available to perform the rescue service. However, the Company called Dauphin based Conductor Letain, who normally operates on the Togo Subdivision between Dauphin, Manitoba and Canora, Saskatchewan, to proceed off his own subdivision to rescue train 311 at Glencairn and to operate it from there through Dauphin to Canora, Saskatchewan.

The Union maintains that the Company was obligated to assign the Gladstone Subdivision work to an available employee regularly assigned to Gladstone Subdivision, namely Conductor Nykoluk. It submits that the assignment of Conductor Letain violated the intention of article 43.5 that train service employees are to be kept on their regularly assigned subdivisions. It is on that basis that the run-around payment of 100 miles under article 43.2 is claimed.

The Company submits that the exception found within article 43.5 operated in the case at hand, and that secondly the course which the employer followed was expressly permitted by the provisions of article 43.7 of the collective agreement. With respect to the issue of the exception for an emergency on account of a shortage of crews, the Company's representatives point out that if Conductor Nykoluk, the only available Gladstone Subdivision conductor in Dauphin, had been sent to perform the rescue of train 311 he would have been substantially delayed in undertaking his line-up assignment to handle train 356 at 15:00, a train for which he was in fact called at 13:25 for a 15:25 departure. Additionally, if train 356 had been held to await Conductor Nykoluk's return to Dauphin on train 311, his subsequent operation of train 356 might have been compromised by the necessity to go off duty for rest before reaching Winnipeg.

Alternatively, the Company submits that the language of article 43.7 is clear, and that the employer, consistent with what it describes as a long-standing practice, is free to utilize employees off their own subdivision to perform rescue service which arises because train service employees require rest. That, it submits, is the plain meaning of article 43.7 of the collective agreement.

The Union's representative submits that that is not the proper interpretation of article 43.7. He submits that article 43.7 was meant only to qualify the change off obligation described in articles 43.5 and 43.6. In other words, in the Union's interpretation, these provisions contemplate that employees may be pressed into service off their subdivision in an emergency, but must be changed off with the first available unassigned employee from that subdivision, with the only exception being when the employees from the subdivision become unavailable by reason of requiring rest.

With respect to the interpretation of article 43.7, the Arbitrator has some difficulty with the Union's interpretation. The right to book rest under the collective agreement is absolute and unqualified. That being so, it is less than clear to the Arbitrator why the parties would have found it necessary to express the obvious, namely stipulate that the change offs contemplated in articles 43.5 and 43.6 would not be executed if the employees who would otherwise change off had booked rest. As a canon of interpretation, it is to be presumed that a provision in a collective agreement is intended to have some meaning. Since employees who require rest cannot be forced into service under the terms of the collective agreement, the interpretation of article 43.7 put forward by the Union would make that provision little more than a redundant statement of the obvious. In the Arbitrator's view the provision was not intended to be so restricted, and there is little or no indication on the language of article 43.7 itself that it was intended to apply only to the circumstances of a change off.

A plain reading of the article suggests a broader intention. Articles 43.5 and 43.6 are the cornerstone provisions of the collective agreement whereby employees are to be kept on their own subdivisions. In my view the plain language of article 43.7 would appear to be a recognition by the parties that an exception to those two provisions may be made when a rescue situation arises whereby employees operating on a given subdivision require rest. It is only through that interpretation that the provisions of article 43.7 can be given any substance beyond the obvious proposition, inherent in the Union's interpretation, that employees who require rest cannot be forced into service. Therefore, solely on the basis of the interpretation of article 43.7, the Arbitrator would dismiss the grievance.

Alternatively, if I am incorrect in my analysis of article 43.7, I am also satisfied that the Company has demonstrated that the circumstance which presented itself on April 16, 2002 did involve an emergency on account of a shortage of crews which required the assignment of an individual onto another subdivision, as contemplated within article 43.5. At the time in question Conductor Nykoluk was the only Winnipeg based conductor at Dauphin. He was then lined up to handle train 356 to Winnipeg, an assignment for which he was eventually ordered at 15:25. The evidence before the Arbitrator established, on the balance of probabilities, that had Conductor Nykoluk been assigned to rescue train 311 he could not have been in place at Dauphin for a timely departure of train 356 from Dauphin to Winnipeg, and would, in any event, have been in a situation of jeopardy with respect to his ability to reach Winnipeg without the necessity of booking rest. In my view this is precisely the kind of circumstance contemplated in the language of article 43.5 of the collective agreement. Moreover, when articles 43.5, 43.6 and 43.7 are read together, it is apparent that the parties intended to give the Company the operating flexibility of utilizing employees off their own subdivision for the limited purpose of rescuing trains on account of crews booking rest. In these circumstances, no violation of the collective agreement is disclosed.

For all of these reasons the grievance must be dismissed.

October 21, 2003

(signed) MICHEL G. PICHER
ARBITRATOR