

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3386

Heard in Montreal, Wednesday, 10 December 2003

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

The application of article 22 as it refers to the Company's obligation to supply same craft pilots to locomotive engineers unfamiliar with territory for which called to operate on.

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

On November 10, 2001, K. Bernhard, a North Battleford stationed locomotive engineer, was ordered in single subdivision service to operate train 452 eastward from the away from home terminal of Vermillion to North Battleford on the Blackfoot Subdivision.

Locomotive Engineer Bernhard requested a pilot under the terms of article 22 of the 1.2 agreement, specifically to assist him in operating train 452 over the 8.7 miles on the Vegreville Subdivision, a subdivision to which Locomotive Engineer Bernhard had not previously operated on. The Company denied the request.

It is the Brotherhood's position that a pilot should have been provided to Locomotive Engineer Bernhard under the provisions of article 22 of the 1.2 agreement. The Brotherhood grieved the matter asking that the Company cease and desist from operating in a manner that does not represent what it feels is the intent and clear workings of article 22 of the 1.2 agreement.

The Company had denied the Brotherhood's request.

### **FOR THE BROTHERHOOD:**

**(SGD.) D. E. BRUMMUND**

**FOR: GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) D. VanCAUWENBERGH**

**FOR: SR. VICE-PRESIDENT, WESTERN CANADA**

There appeared on behalf of the Company:

D. VanCauwenbergh – Sr. Manager, Labour Relations, Winnipeg  
J. Krawec – Sr. Manager, Labour Relations, Toronto

And on behalf of the Brotherhood:

D. E. Brummund – Sr. Vice-General Chairman, Edmonton  
D. J. Shewchuk – General Chairman, Edmonton  
R. Leclerc – General Chairman, Grand-Mère

P. Vickers  
R. Caldwell

– Vice-General Chairman, Central  
– Vice-General Chairman, Central

### **AWARD OF THE ARBITRATOR**

The facts pertinent to this grievance are fully stated in the Joint Statement of Issue. The dispute concerns the application of article 22.1 of the collective agreement which provides, in part, as follows:

**22.1** A locomotive engineer in charge of an engine ordered over any subdivision with which he is not familiar will be furnished with a locomotive engineer as pilot in addition to engine crew, provided such subdivision is not under construction.

It is common ground that the grievor had never before operated over the approximately eight miles on which he was called upon to handle his train on November 10, 2001. The train in question was some 8,000 feet in length and the territory was not particularly difficult, having gentle curves, but it did involve certain segments of downhill grade, one of which achieved a value of 0.80.

The Company submits that in the circumstances, bearing in mind that the operation took place during daylight, the assignment of a pilot was not necessary. The Arbitrator cannot agree. The language of article 22.1 is relatively straightforward, and does not, on its face, vest any discretion in the Company as to the appropriateness of assigning a pilot when one is requested. Whether there may not be some circumstances in which the request of a pilot might be abusive need not be resolved in this case, as for example where the distance is relatively short, and without any complicating features, so that familiarity might be gained immediately. While the

Company referred the Arbitrator to **CROA 1657**, that decision dealt with the different language found in the collective agreement of the United Transportation Union.

In the instant case it is not disputed that the grievor did not have charts or data with respect to the specifics of the grade which he would encounter on the territory with which he was not familiar. While it is true, as the Company's representatives note, that the movement was largely on OCS territory with relatively few complicating characteristics, I am satisfied that the length of the grievor's train, the grade which he was to encounter and the need to reduce speed as his movement approached the terminal of Vermillion did, in all of the circumstances, justify his request for a pilot. To put it differently, the request was not frivolous or abusive in the circumstances.

The grievance must therefore be allowed. The Arbitrator finds and declares that the Company did violate the collective agreement by failing to provide a pilot as requested by Locomotive Engineer Bernhard on the Blackfoot Subdivision on November 10, 2001. In the absence of evidence indicating that the Company's action was in the nature of a concerted practice, I do not consider it necessary to issue the cease and desist order requested by the Brotherhood, as the Company can be expected to act in good faith and comply with the interpretation of article 22.1 contained within this award.

December 15, 2003

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