

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3430

Heard in Montreal, Tuesday, 8 June 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

EX PARTE

DISPUTE:

A claim submitted by Locomotive Engineer B. Willows of Winnipeg, Man.

UNION'S STATEMENT OF ISSUE:

On September 11, 2002, a Melville, SK, home stationed crew was instructed to deadhead to a point fifty-eight miles east of Rivers, MB, on the Rivers East Subdivision off their own territory to handle train A40141 10 from Extra to Rivers and then on to Melville.

Locomotive Engineer Willows was first out and available at Rivers, being in position to accept a call for service to rescue train 401 at Extra, which, for all purposes of this dispute, is territory that is under the jurisdiction of Winnipeg home terminalled locomotive engineers.

The Union contends that locomotive engineers must be kept on their own territory in the circumstances as relating to this grievance, which is supported under and in accordance with the application of paragraph 61.6(c) and Addendum No. 86 of collective agreement 1.2.

The understanding flowed from the 1997/1998 round of national negotiations, that culminated in the signing of a memorandum of agreement on February 13, 1998, specifically that the Company agreed that locomotive engineers would be kept on their assigned territory.

Accordingly, the Union submits that the grievor should have been properly called in turnaround service to Extra to handle train 401 from that point to Rivers. As the result of the Company's actions on the day in question, the grievor is entitled to a penalty payment of one hundred (100) miles, as outlined in paragraph 32.2 of article 32.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) D. E. BRUMMUND

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

- S. M. Blackmore – Manager, Human Resources, Edmonton
- D. VanCauwenbergh – Sr. Manager, Labour Relations, Toronto
- R. Reny – Sr. Manager, Human Resources, Edmonton

And on behalf of the Union:

- D. E. Brummund – Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The instant dispute turns on the application of article 61.6 of the collective agreement, as well as Addendum No. 86. Article 61.6 reads as follows:

Rescue service

61.6 (a) In order to provide rescue service to trains in extended runs, yard crews may be used within a distance of 50 miles outside the established switching limits.

61.6 (b) When yard employees are used in rescue service it will be considered yard foreman only operation and the yard helper, if any, may be deployed at the discretion of the Company.

61.6 (c) Crews will be called in rescue service utilizing any one of the following options:

- Yard crews within a distance of 50 miles outside established switching limits
- Spareboard
- Pool, extended run or single sub (when single sub crews are used they will be kept on their own territory)

Addendum 86 of the collective agreement reads as follows:

RESCUE SERVICE

B. J. Henry
General Chairperson, C.C.R.O.U.
Suite 309 – 8616 – 51st Avenue
(Gallery 51)
Edmonton, Alberta, T6E 6E6

M. Simpson
General Chairman, C.C.R.O.U.
No. 2 – 3012 Louise Street
Saskatoon, Saskatchewan
S7J 3L8

Gentlemen:

During this round of negotiations, the Council raised a concern with the Company that on occasions, employees working on single sub territory and performing rescue service were required to rescue trains off their regularly assigned subdivision.

This will confirm that single sub employees, when called for rescue service, will be restricted to their regularly assigned subdivision.

Yours truly,

(Sgd.) Mark M. Boyle

for: K.L. Heller
Sr. Vice-President, Line Operations

The fundamental position of the Union is that employees in single subdivision service are not to be assigned off their regularly assigned subdivision, whether the rescue is in relation to an extended run train or a train which is itself in single subdivision service, as was the case in the facts giving rise to this grievance. The Company maintains that the concept of rescue service is itself a by-product of extended runs. Its representative notes to the Arbitrator's attention that extended runs were first implemented in selected corridors following the 1995 Adams mediation process. It appears that subsequently concerns were raised by the Union with respect to the use of single subdivision crews off their own subdivisions to rescue extended run trains. On that basis, during the 1997-98 round of negotiations the language of article 61.6 was incorporated into the collective agreement, as a result of a memorandum of agreement of February 13, 1998.

In the Arbitrator's view the material amply supports the position of the Company. Firstly, the text of article 61.6, appearing under the title "Rescue Service", expressly states that it is in reference to "rescue service to trains in extended runs" as reflected in sub-paragraph (a) of that provision. It is noteworthy that Addendum 86, which arguably does use more general language, is dated February 13, 1998, the same date as the memorandum of agreement which resulted in the language of article 61.6 of the collective agreement.

Moreover, the unchallenged representation before the Arbitrator is that an Explanation of Change document generated by the Company, in consultation with the Union at the time of the implementation of the new provision, makes clear reference to the purpose of the change. The first paragraph reads as follows:

In order to provide rescue service to trains in extended runs the company has four options (yard crews, spareboard crews, extended run pool crews, or, single subdivision pool crews) which may be used in "any" order based on cost effectiveness and operating considerations.

Bearing in mind that in this grievance the Union carries the burden of proof, the preponderance of supporting material, and indeed the language of the collective agreement, lead to the more probable conclusion, on the balance of probabilities, that the parties did intend, as the Company maintains, to limit the application of the rescue service provisions of article 61.6 and addendum 86 of the collective agreement to circumstances involving rescue service to trains in extended runs.

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

June 14, 2004

(signed) MICHEL G. PICHER
ARBITRATOR