

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3515

Heard in Montreal, Tuesday, 11 October 2005

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dispute concerning the characterization of, and the wage scale associated with, new trucks being introduced by the Company.

JOINT STATEMENT OF ISSUE:

On April 18, 2005, the Union initiated a grievance that took issue with the Company's characterization of new trucks (Freightliner FL80 and M2 Business Class) that it intends to use to replace the current BTMF trucks. According to the Company, since the new trucks will replace the old BTMF trucks, the new trucks must be considered as "BTMF Section Vehicles" for the purposes of Appendix "A" of Agreement no. 41. The consequent of this is that the operators of the new vehicles will be paid at the Track Maintainers/Truck Driver rate of pay as they were when they operated the old BTMF trucks. The Union, on the other hand, takes the position that the new trucks are sufficiently different from the old BTMF trucks to warrant payment of the higher Group I rate of pay.

The Union contends that: **(1.)** Appendix "A" of Agreement no. 41 (the memorandum of agreement concerning the reorganization of the Basic Track Maintenance Force) was negotiated in 1993 and dealt with the introduction of a specific piece of equipment called the "BTMF Section Vehicle" (a vehicle under 28,000 GVW and without air brakes); **(2.)** The new trucks are over 28,000 GVW and are air brake equipped. In view of this, the new trucks cannot be said to have formed any part of the negotiations in 1993 that gave rise to Appendix "A"; **(3.)** By refusing to pay the Group I rate of pay, the Company is in violation of article 4.1 of the Machine Operators Memorandum of Agreement where it is stated (in the Note to Group 3) that "Drivers of ... trucks over 28,000 lbs. GVW ... will receive the basic hourly rate of pay applicable to Group I Machine Operators."

The Union requests that the Company be ordered to bulletin al FL80 and MC trucks as Group 3 with the Group I rate of pay, in accordance with the collective agreement. The Union further requests that all affected employees be fully compensated for any and all financial loses, including expenses, incurred as a result of this matter.

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

FOR THE UNION:

(SGD.) Wm. BREHL
PRESIDENT, TCRC/MWED

FOR THE COMPANY:

(SGD.) S. SEENEY
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- S. Seeney – Manager, Labour Relations, Calgary
- S. Samosinski – Director, Labour Relations, Calgary
- E. MacIsaac – Manager, Labour Relations, Calgary

And on behalf of the Union:

- Wm. Brehl – President, TCRC/MWED, Ottawa
- D. Brown – TCRC, Staff, Ottawa

AWARD OF THE ARBITRATOR

The Union contends that the new trucks the Company is now assigning to the Basic Track Maintenance Force (BTMF) section gangs were never the subject of negotiations between the parties and that the general rules of application demand the payment of the Group I rate of pay. The Union further contends that since the BTMF Appendix A agreement was negotiated as a special arrangement and only the type of equipment that was the subject of negotiation and agreement between the parties in 1993 can properly be deemed a "BTMF section vehicle" under Appendix A. In the absence of a definition of the BTMF section vehicle, the Union claims that there is a latent ambiguity which requires the introduction of extrinsic evidence to show the type of vehicle the parties had in mind when they negotiated Appendix A.

The Union further maintains that the evidence from the 1993 negotiations indicates that a BTMF section vehicle was unambiguously and unequivocally intended to be a vehicle of less than 28,000 lbs GVW and not equipped with air brakes. To underline the point, the Union points

to the fact that Appendix A required the Company to absorb the cost of any additional licensing fees regarding the operation of the section vehicle. Accordingly, section 3(d) was included in the BTMF agreement solely for reasons having to do with the situation in 1993. Further, given that the 28,000 lbs. GVW threshold has always been a significant marker for the parties, it is evident that any vehicle weighing more than 30,000 lbs. GVW, as is the case here, cannot be included in the BTMF section vehicle within the Appendix A agreement.

The Company points out that the negotiations between the parties culminated in a memorandum of agreement on June 2, 1993, over the introduction of the BTMF section vehicle. This was a multi-purpose high-rail vehicle, equipped with a crane and designed to do everything from lifting and carrying material and equipment to the transportation of section workers. The position of "Track Maintenance / Section Truck Driver" (TM/TD) was created to perform this work. These TM/TD truck drivers had primary responsibility for the BTMF section vehicle which consisted of regular driving and doing inspections of the BTMF section vehicle. Special section crews consisting of various foremen and maintainer positions were established in areas where the BTMF section vehicle had been assigned. The rate of pay associated with the newly established position of TM/TD was agreed to be the TM rate of pay plus 80¢ per hour. This new rate of pay along with other rates associated with the introduction of the BTMF section vehicle were incorporated into the new collective agreement as Appendix A. The Company maintains that it has the right to introduce equipment which facilitates their working operations.

The Company also pointed out that during the years 1999 and 2002, it introduced new versions of the BTMF trucks. These vehicles were operated by the TM/TDs and operators of vehicles were compensated as provided for in the BTMF agreement. These replacement vehicles were not introduced in great numbers but yet were nonetheless put into use without objection from the Union. These vehicles were apparently in excess of 32,000 lbs GVW and

were equipped with air brakes. These changes in equipment, understandably in the view of this arbitrator, did not incite the Union at the time to file a grievance on the basis that the Company had introduced a truck which fell into a category which was outside the description of a BTMF vehicle.

It is not appropriate to revert to the Machine Operators agreement simply because the Company is introducing upgraded versions of its existing equipment. Had the Company introduced a piece of equipment that directly affected the ranks of its employees, as was the case when the BTMF truck was introduced in 1993, there would be a basis for reverting to the Group 1 rate of pay. The relatively small increase in weight to 32,000 lbs GVW and the introduction of air brakes is simply an insufficient basis to take these vehicles out of the scope of the Appendix A agreement. Appendix A is a detailed Memorandum of Understanding which contemplates the introduction of upgraded equipment like the Freightliner FL80 and M2 Business Class. Should the Union wish to negotiate revised rates for these types of upgraded vehicles, it must do so at the bargaining table.

Accordingly, the grievance is dismissed.

October 18, 2005

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR