

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

**CASE NO. 3572**

Edmonton, Wednesday, 12 July 2006

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Violation of paragraph 61.6(c) of article 61 and Addendum 86 of collective agreement 1.2 on April 25, 2006, contrary to the Arbitrator's award in CROA Case No. 3331 of April 9, 2003 and the supplementary award of July 13, 2004.

**JOINT STATEMENT OF ISSUE:**

On April 25, 2006, Saskatoon home-stationed, single subdivision Locomotive Engineer T. Murphy was at the away from home terminal of Kindersley, SK. The Company utilized Mr. Murphy to travel west of Kindersley to Pinkham on the Oyen Subdivision to operate extended run train Q114 51 25. He then operated the train into Kindersley where he went off duty.

The Union contends that the Company utilized Locomotive Engineer Murphy off of his assigned territory to rescue extended run train Q114 51 25, in violation of article 61.6(c) and Addendum No. 86 – Rescue Service, Agreement 1.2.

The Union also contends that this is in violation of the same provisions of the collective agreement as were addressed by the arbitrator in CROA 3311 and the supplementary award of July 13, 2004 and as such, requests a cease and desist order from the arbitrator. The Union also seeks significant escalating remedy payments to affected members under the provisions of Addendum No. 111, agreement 12, taking into consideration the resolution of previous article 61.6(c) grievances. Finally, the Union seeks reimbursement from the Company of costs associated with bringing this case forward to arbitration.

The Company disagrees with the Union's position and contends that article 10 of agreement 1.2 allows for the utilization of locomotive engineers to make one round trip or tour of duty out of the away from home terminal.

**FOR THE UNION:**

**(SGD.) D. J. SHEWCHUK**  
GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) B. LAIDLAW**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- B. Laidlaw – Manager, Labour Relations, Winnipeg
- J. Torchia – Sr. Manager, Labour Relations, Edmonton
- K. Morris – Manager, Labour Relations, Edmonton
- D. Crossan – Manager, Labour Relations, Prince George
- M. Moroz – Sr. Manager, Crew Management Systems, Edmonton
- R. Fromont – Manager, Crew Management Western Canada

And on behalf of the Union:

- B. Willows – Vice-General Chairman, Edmonton
- D. J. Shewchuk – General Chairman, Edmonton
- T. Markewich – Vice-General Chairman, Thunder Bay

### **AWARD OF THE ARBITRATOR**

It is common ground that locomotive engineers at Saskatoon assigned to the West Single Sub Pool operate in single subdivision service between Saskatoon and Kindersley, Saskatchewan over the Rosetown Subdivision. Beyond Kindersley, extending over the Oyen and Drumheller Subdivisions, is territory on which locomotive engineers operate on an extended run basis from Calgary to Kindersley and return. It is not disputed that train Q114 51 25 was assigned in extended run service from Calgary to Kindersley. Because of delays, its crew was not able to reach Kindersley within the limits of the permissible rest thresholds established within the mandatory rest provisions of the collective agreement. As a result, their train was stopped on the Oyen Subdivision, some fifteen miles west of Kindersley and they deadheaded to Kindersley where they went off duty.

Locomotive Engineer Murphy, home terminalled at Saskatoon, was at his away from home terminal of Kindersley, operating in single subdivision service between Kindersley and Saskatoon. On April 25, 2006, Mr. Murphy and Conductor J.W. Kuzyk were ordered in turnaround service to travel west to Pinkham, on the Oyen Subdivision, where they were to pick up train Q114 51 25 and return it to Kindersley. They did so, and went off duty at Kindersley, being released for a period of rest. When they next resumed duty they were assigned to operate the same train, train Q114 51 25 in straightaway service to Saskatoon.

The Union submits that the Company violated the provisions of article 61.6(c) of the collective agreement, a section headed "Rescue Service". The pertinent article 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.

**(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.

**(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).

The Union also refers to Addendum No. 86:

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.

It does not appear disputed that the above language was negotiated into the collective agreement by reason of a memorandum of agreement executed on February 13, 1998, following some experience with respect to the rescuing of trains after the introduction of extended runs. The Union submits that the facts of the case at hand are indistinguishable from those considered by this Office in **CROA 3331**. It maintains that the Company could not, by reason of the provisions of article 61.6(c) and Addendum No. 86, utilize the service of Locomotive Engineer Murphy to rescue an extended run train off his own territory, which is to say the single subdivision territory between Saskatoon and Kindersley.

The Company offers a different view. It submits that it was entitled to assign Locomotive Engineer Murphy and his conductor in turnaround service west of Kindersley, that is to say from Kindersley to Pinkham and return to Kindersley, going off duty, under the provisions of article 10 of the collective agreement. Article 10 reads as follows:

**Article 10 – Limit to Turnarounds Freight Service**

**10.1** A locomotive engineer will not be held at the away-from-home terminal to make more than one round trip out of, or tour of duty at the away-from-home terminal.

**10.2** In the event of locomotive engineer stands first-out, after having worked the turnaround trip or tour of duty, away from the home terminal and another trip or tour of duty is to be made, he may elect whether or not he may make such trip or tour of duty or require the locomotive engineer standing behind him to do so; and the exercise of this right will not constitute a runaround.

The Arbitrator has substantial difficulty with the position advanced by the Company. While it may be that the language of article 10 pre-dates the introduction of extended runs and the protective provisions of article 61.6 concerning rescue service, it is less than clear to the Arbitrator that its provisions can effectively trump article 61.6, a provision which, along with Addendum No. 86, was negotiated subsequently, when the parties were fully aware of the provisions of article 10.

The essential question is the nature of the assignment given to Locomotive Engineer Murphy. The Company denies that what occurred was rescue service. The Arbitrator cannot agree. The nature of rescue service was to some extent reflected in the text of a document prepared by both parties and communicated as a means of explaining the changes in collective agreement language negotiated in 1998. That document reads as follows:

**Rescue Service Agreement 1.2 & 4.3**

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)

**Explanation of Change:**

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.

**NOTE:** When called for rescue service, employees in single subdivision pool service will be restricted to their regularly assigned subdivision (refer letter dated 13 February 1998). It was understood between the parties that while this would preclude single subdivision pool crews from travelling out on an adjacent territory to rescue a train, it would not preclude the crew from rescuing a train which was stopped at the outer switch for the connecting subdivision. For example:

Crews operating in single subdivision pool service out of Melville on the Rivers West Subdivision could rescue a westbound train stopped at the outer switch at Rivers on the Rivers East Subdivision.

The Arbitrator has great difficulty understanding how the Company can deny that what transpired in the case at hand was done "... in order to provide rescue service to [a train] in extended runs ..." as contemplated within the Explanation of Change document. The rescue of train Q114 51 25 off the Oyen Subdivision is, in essence, the whole purpose and reason for the assignment given to Locomotive Engineer Murphy. The provisions of article 10, which are intended to protect employees at away from home terminals from performing more than one assignment in turnaround service, have no meaningful bearing on the realities of the case at hand. In this case, I am satisfied that the comments found in **CROA 3331**, in which a single subdivision crew was sent from Sioux Lookout westward to Pelican and then eastward to Armstrong in straightaway service, which was found to be in violation of article 61.6(c) and Addendum No. 86, are appropriate to this case:

With the greatest respect, in the Arbitrator's view it is substance, and not form, which must prevail in the circumstances. There can be little doubt but that train 102 fell short of its mark in attempting to reach Sioux Lookout, by reason of the rest provisions of the collective agreement. What occurred is, in the Arbitrator's view, a paradigm case of what the parties have come to understand as the need to "rescue" a train in that circumstance. For the rational and consistent administration of the collective agreement, in that circumstance it cannot be the nomenclature adopted by the Company with respect to a particular assignment which determines the true nature of the work being performed. In the case at hand what plainly transpired, in substance, is that train 102 was effectively rescued from its position at Pelican, and brought eastward to Sioux Lookout by Locomotive Engineer Davies and crew, for furtherance onward by them to Armstrong, Ontario. The characterization of their assignment as "re-crewing" as advanced by the Company does not change the substance of what occurred, nor can it avoid the duties and obligations which the parties are charged with respecting by virtue of their own agreement, as reflected in paragraph 61.6(c) and Addendum No. 86 of the collective agreement.

For reasons it best appreciates, in 1998 the Company undertook not to assign single subdivision locomotive engineers off their territory to rescue extended run trains on another subdivision. That concept appears to the Arbitrator to be relatively simple and straightforward. It would be tantamount to bad faith to suggest that the protections accorded to the employees depend entirely on the name of the "call" which the Company decides to use. The reality, and the Company's obligations, cannot be changed by designating the work in question as straightaway service, turnaround service or any other form of service. If the Company's position should prevail, what meaning would be left to the expression "rescue service", expressly inserted into the collective agreement as part of article 61 following the introduction of extended run service?

Regrettably, I am also of the view that the Union is justified in invoking the remedy provisions in Addendum 111 of the collective agreement. The Company knew,

or reasonably should have known, that the sole purpose of the assignment given to Locomotive Engineer Murphy was to rescue train Q114 51 25, and that it was assigning him off his territory to do so. It knew, or reasonably should have known, that that was prohibited by the provisions of article 61.6(c) of the collective agreement, as clarified by the interpretation of this Office in **CROA 3331**. The Arbitrator's conclusion in that regard is reinforced by the fact, pleaded by the Union, that a number of other disputes have been resolved by them following the decision of this Office in **CROA 3331**, including certain enhanced penalty payments, which were agreed.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company violated article 61.6(c) and Addendum No. 86 of the collective agreement by reason of its assignment of Locomotive Engineer Murphy to rescue train Q114 51 25 off his single subdivision territory on April 25, 2006. The Company is directed to cease and desist from the practice engaged in on that occasion and henceforth to comply with the requirements of the collective agreement concerning the rescue of extended run trains whose crews are unable to reach their objective terminal by reason of mandatory rest provisions. In keeping with the remedy provisions, before necessarily ordering any compensation to the employees concerned, it is appropriate for the parties to first negotiate that issue between them. Should they be unable to reach any agreement, the matter may be spoken to, including the Union's request for additional damages for its costs associated with bringing this matter before the Arbitrator.



On the foregoing terms the matter is remitted to the parties, and the Arbitrator retains jurisdiction.

July 17, 2006

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