

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

CASE NO. 4003

Heard in Montreal, Tuesday, 10 May 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The failure to award an early retirement opportunity (Conductor Only Credit) to A.C. MacLellan of Calgary, AB.

UNION'S STATEMENT OF ISSUE:

As a result of the closure of the terminal of Roma Junction, Alberta, four employees were designated to receive an early retirement opportunity pursuant to Addendum 41 of Agreement 4.3.

One of these employees was A.C. MacLellan, who relocated to Calgary as a result of the terminal closure. In May 2009, Mr. MacLellan contacted CN Human Resources and advised them of his intent to retire in the near future. The Company advised Mr. MacLellan that he would not be entitled to the previously confirmed Conductor Only Cred on the basis that he was working as an engineer.

Mr. MacLellan retired effective January 2010 without benefit of this credit. A grievance was filed on his behalf. It is the Union's position that, even though Mr. MacLellan may have been assigned to a position as a locomotive engineer at the time that he retired, too many people were assigned to the locomotive engineers' working boards and that, had they been properly adjusted, Mr. MacLellan would have been working as a conductor. Further, the Union submits that the last trip Mr. MacLellan worked was as a conductor, entitling him to the credit.

The Company disagrees.

**FOR THE UNION:
(SGD.) R. A. HACKL
GENERAL CHAIRMAN**

There appeared on behalf of the Company:

K. Morris	– Sr. Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
T. Brown	– General Manager, Winnipeg

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
Wm. Michael	– General Chairman, VIA Lines Central, Kitchener

AWARD OF THE ARBITRATOR

The Union maintains that the Company improperly denied to the grievor a Conductor Only Early Retirement Credit. The Company submits that he was not entitled to that credit as he no longer worked as a conductor at the time of his retirement.

It is common ground that following the closure of the terminal of Roma Junction, Alberta the parties agreed to specifically designate four employees to be eligible to receive early retirement opportunities in accordance with Addendum 31 of collective agreement 4.3. The grievor was one of those named employees. The agreement of the parties concerning the four employees takes the form of a letter of understanding dated August 14, 2000. That letter includes the following:

Based on our discussions, those opportunities will be assigned and made available to the following four protected G.S.L.B. employees when they become eligible to retire under the terms and conditions set out in Addendum 31 of Agreement 4.3. It is further understood that these opportunities are not transferable and can only be utilized by the employees identified below:

It is common ground that Mr. MacLellan moved on in Company service after the closure of Roma Junction and at the time of his retirement had worked for several years

as a locomotive engineer in Calgary. As it happens, his final tour of duty was in emergency service as a conductor.

Addendum 31 deals with the management of early retirement opportunities originally established under the Conductor Only Agreement of 1992. It is well established that a precondition to the granting of a Conductor Only Retirement Opportunity is the existence of a surplus of conductors at a given terminal. In the event of a surplus, in accordance with paragraph (4), at each change of card: "Such early retirement opportunities will be made available, on a terminal by terminal basis, to protected employees working under Agreement 4.3."

The Arbitrator has some difficulty with the position taken by the Union in the case at hand. Firstly, having regard to the management of the boards at Calgary, I cannot find that the Union has established a surplus of employees at that location. Most critically, at the time of his retirement Locomotive Engineer MacLellan had been set up for a considerable period of time as a locomotive engineer. The fact that he made a single emergency trip as a conductor does not, in my view, properly qualify him as a "protected employee working under Agreement 4.3." within the meaning of Addendum 31 of the collective agreement. To say otherwise would be tantamount to saying that a conductor who worked his last pre-retirement day on an emergency trip as a locomotive engineer would forfeit his protection under the conductors' collective agreement, something which clearly was not intended.

Nor, in my view, does the Union's position square with the original purpose of the Conductor Only Early Retirement Opportunities originally agreed to between the parties. The purpose of those credits was to provide protection to conductors in the event of a conductor surplus following on the introduction of Conductor Only operations. As a locomotive engineer, Mr. MacLellan cannot fairly be said to have been among the employees intended to be protected by Addendum 31, a reality which is manifestly confirmed by the fact that he was not, in any meaningful sense, an employee working under collective agreement 4.3 at the time of his retirement. That a credit was made specific to him in the Roma closure does not alter those fundamental requirements. He in fact never became eligible to retire under the terms and conditions set out in Addendum 31 of Agreement 4.3, as contemplated within the letter of August 14, 2000.

For these reasons the grievance must be dismissed.

May 16, 2011

(signed) MICHEL G. PICHER
ARBITRATOR