

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4138**

Heard in Montreal, Wednesday, 12 September 2012

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Certain New Brunswick Eastern Territory (NBET) locomotive engineers and conductors are being denied travel time and OCS kilometre expenses when forced to travel in connection with their employment.

UNION'S STATEMENT OF ISSUE:

On or about December 1, 2010, the Company began refusing payment of travel time and OCS kilometre expense allowances to certain NBET locomotive engineers and conductors. The Union's position is that articles 9 and 13 of the NBET – QET collective agreement clearly provide payment of travel time and kilometre expense allowance for employees who must travel as a result of not have sufficient seniority to hold an assignment at their home location.

The Union filed Step 3 grievances requesting payment for all affected employees. The Company did not respond to the Step 3 grievances.

During a joint conference in December 2011, the Company, although still refusing to provide an official written response at Step 3, did commit that the Step 3 grievances already filed by the Union would be used to encompass all employees affected by the dispute.

The Union requests a finding that the Company is in violation of articles 9 and 13 and that all affected employees be compensated for their travel time and OCS kilometre expenses in accordance with article 9 and 13 of the NBET – QET collective agreement.

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

There appeared on behalf of the Company:

- | | |
|-------------------|---|
| D. Gagné | – Sr. Manager, Labour Relations, Montreal |
| J. Torchia | – Director, Labour Relations, Edmonton |
| D. VanCauwenbergh | – Director, Labour Relations, Toronto |
| A. Durucher | – Assistant Director, CMC, Montreal |
| D. Larouche | – Manager, Labour Relations, Montreal |

There appeared on behalf of the Union:

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|------------|---|
| R. Leclerc | – General Chairman, Grand-Mère |
| J-M Hallé | – Sr. Vice-General Chairman, St-Romuald |
| C. Smith | – Sr. Vice-General Chairman (ret'd) |

AWARD OF THE ARBITRATOR

On July 20, 2010 the Company and the Union concluded a single collective agreement intended to cover the former employees of the New Brunswick East Coast Railway (NBEC) and the Chemin de fer de la Matane et du Golfe (CFMG). That agreement was ultimately ratified on October 13, 2010.

At issue in this grievance is the administration of paragraph 9.3 of the collective agreement which reads as follows:

- 9.3 Employees assigned to a recognized terminal other than that of their Home Location will be entitled to the provisions of paragraph 13.2 and 13.3. Employees who can hold work within their classification at their Home Location but instead elect to work at another recognized terminal will not be entitled to either of the above noted provisions.

Note: An employee's Home Location is defined as the recognized terminal closest to the employee's permanent residence. The four recognized terminals are:

NBET – Miramichi, Bathurst and Campbellton

QTET – Mont-Joli

The benefits provided in paragraphs 13.2 and 13.3 are as follows:

- 13.2 Employees required to travel between the following specific locations will be paid, in each direction, a travel allowance as follows:
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|---|-----------|
| (a) Between Campbellton and Bathurst | 1.5 hours |
| (b) Between Campbellton and Miramichi | 2.5 hours |
| (c) Between Bathurst and Miramichi | 1.0 hours |
| (d) Between Mont-Joli and Rivière-du-Loup | 2.0 hours |
| (e) Between Mont-Joli and Campbellton | 2.0 hours |

Such time will not be considered as time worked and will not be used in the calculation of overtime but will be used in the calculation of guarantee. The return segment of the travel time will be taken into consideration for personal rest purposes pursuant to paragraph 6.4.

- 13.3 Employees will be provided expenses at the rate of \$0.31 per kilometre when authorized to use their personal automobile for travelling to or from a work location.

It emerged, in January of 2011, that the Company and the Union had a disagreement as to the manner of determining an employee's Home Location. The Company maintained that the Home Location of an employee was his or her terminal upon the first bid following the commencement of the new collective agreement. It is on that basis, according to the Company, that travel allowance under article 9.3 and articles 13.2 and 13.3 is to be determined. It appears that the Company did not enforce that view for some time, but it did commence doing so in September of 2011.

The Arbitrator has some difficulty with the position of the Company. It is trite to say that the plain terms of a collective agreement must be applied as they appear. There is nothing in the collective agreement to which the Arbitrator is referred which would suggest that an employee's Home Location is to be defined as the terminal that he or she worked from either at the time of the collective agreement being concluded or, alternatively in the Company's view, at the change of card. As noted above, article 9.3 is explicit. The note to that article bears repeating:

Note: An employee's Home Location is defined as the recognized terminal closest to the employee's permanent residence. The four recognized terminals are:

NBET – Miramichi, Bathurst and Campbellton

QTET – Mont-Joli

On what basis can there be any other definition of "Home Location" for the purposes of the collective agreement? I can see none. While the Arbitrator appreciates that the definition contained in article 9.3 may lead to greater dislocation and expense to the Company, I must take the collective agreement as I find it.

For these reasons the Arbitrator is compelled to declare that the interpretation of the Union is correct and that the Company's treatment of the issue of Home Location for the purposes of travel allowance is in violation of the terms of article 9.3 of the collective agreement. The Company is directed to compensate those NBET running trades employees who were adversely affected by the incorrect interpretation of the Company in respect of the operation of paragraphs 9.3, 13.2 and 13.3 of the NBET-QET collective agreement.

September 18, 2012

(signed) MICHEL G. PICHER

ARBITRATOR