

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4204

Heard in Montreal, May 14, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Conductor B. Marshall was standing first out on the Capreol spareboard and was not called to work Q111 on February 11, 2012. Conductor M. Foster whose turn was set up as a Locomotive Engineer but the Company failed to put him on the Engineer's spareboard occupied the turn.

JOINT STATEMENT OF ISSUE:

On February 11th, 2012 Conductor Marshall was on the spareboard. The Union asserts that Conductor Marshall was denied a work opportunity on Q111 when the Company allegedly failed to properly put Mr. Mike Foster on the Locomotive Engineer's spareboard so that he was working as a conductor and was called for the conductor assignment on Q11131D 11.

Mr. Marshall submitted a time claim for 588 constructive miles based on the Extended Run Principals.

The Union alleges the Company in this instance violated Article 56 along with Article 85.5 and Addendum 123 of the 4.16 Collective Agreement and as such the Union seeks a remedy as prescribed in Addendum 123.

The Union seeks to have the grievor made whole and paid the 588 miles as claimed for the violation of Article 56 and the Extended Run Principals.

The Union's position:

It is the Union's position that the Company should have placed Mr. Foster on the Locomotive Engineer's spareboard as soon as he declared to Capreol as his turn was set up.

As a result of the Company's failure to properly place Mr. Foster on the Engineer's spareboard the Company denied Conductor B. Marshall a work opportunity and as a result the Union is seeking 588 constructive miles.

The Company's position:

The Company disagrees with the Union's position. The Company asserts that the grievance is not valid or arbitrable as neither Mr. Marshall nor the Union can grieve an alleged failure of the Company to set up another employee under a different collective agreement. It is also the Company's position that the assignment was properly called.

In the alternative, and without prejudice to the above, Conductor Marshall had no loss of earnings.

FOR THE UNION:
(SGD.) J. Orr
Senior Vice President Operations

FOR THE COMPANY:
(SGD.) J. Robbins
General Chairperson

There appeared on behalf of the Company:

V. Paquet	– Labour Relations, Toronto
D. Gagne	– Senior Labour Relations Manager, Montreal
M. Marshall	– Senior Labour Relations Manager, Toronto
D. VanCauwenbergh	– Director Labour Relations, Toronto
D. Larouche	– Labour Relations Manager, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
P. Vickers	– General Chairman, Sarnia
P. Boucher	– Arbitration Coordinator, Ottawa

AWARD OF THE ARBITRATOR

The facts disclose that on January 9, 2012 Conductor M. Foster was cut off the Conductor's spareboard at Belleville. Following a period of vacation he displaced into Capreol on February 7, 2012. The Company managed his displacement as that of a conductor, assigning him to a conductors pool on the CH08 assignment as a result of which he worked as a conductor on February 11, 2012 on train Q11131D 11 between Capreol and Hornpayne. The Union maintains that that assignment should have been given to Conductor B. Marshall who was then first out on the conductor's spareboard.

It is not disputed that Mr. Foster was qualified as a locomotive engineer. The Union takes the position that he should have been set up immediately as a locomotive engineer on the locomotive engineer's spareboard, and that the Company was not

correct in taking the position that he could not be placed on the locomotive engineer's spareboard until the normal weekly adjustment on Tuesdays.

The Union relies on the provisions of article 66.17 of the Collective agreement which provides as follows:

An Engine Service Employee will be required to perform service as a locomotive engineer, in accordance with the agreement governing that classification, in preference to performing service in classifications covered by this Agreement, except as otherwise provided in paragraphs 66.15 and 66.16. Should Engine Service Employees who have established seniority as a locomotive engineer lose such seniority for any reason they will also forfeit their right to work as engine service employees.

Upon a review of this case, I am compelled to agree that the Union is correct. The language of article 66.17 is relatively categorical. An ESE conductor, such as Mr. Foster, is "required to perform service as a locomotive engineer" in preference to doing work of other classifications under the collective agreement. In so far as the facts indicate, there would appear to have been no impediment to Mr. Foster simply being added to the locomotive engineer spareboard with whatever resulting adjustments that might occasion. Under the provisions of the collective agreement he was not to be assigned as a conductor.

Nor can the Arbitrator accept the argument of the Company that the Union is in effect attempting to enforce the provisions of another collective agreement. As is clear from the material before me, the Union relies on Article 66.17 of its own collective agreement. In my view it does so correctly, and the facts disclose that the Company's failure to follow that article resulted in the loss of an assignment to the grievor,

Conductor B. Marshall. While what occurred is in fact not a run-around, the facts are somewhat analogous to the situation reviewed by Arbitrator Weatherill in CROA 501, where an order of compensation was made. In the circumstances I am satisfied that the grievance is well founded and direct that the grievor be paid 588 constructive miles for the tours of duty worked by Mr. Foster, less any miles worked by Mr. Marshall in mitigation of his losses.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR