

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4206

Heard in Montreal, May 14, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The rights and responsibilities of a Locomotive Engineer in regards to working with a Conductor Locomotive Operator (CLO).

JOINT STATEMENT OF ISSUE:

Following the Company's issuance of a seven day suspension to Mr. Michael Byrnes, a locomotive engineer, and subsequent issuing of a clarification on CLOs to the Union, the Union filed a grievance in response to this clarification. The Union does not agree with the Company's position. Further, it is the Union's position that the CLO can only operate the locomotive upon the authority, direction and discretion of the locomotive engineer.

In addition, so as to ensure safe operations of the locomotive by way of proper oversight and monitoring, it is the Union's position that the CLO is prohibited from operating the locomotive in the absence of the Locomotive Engineer.

The Company does not agree with the Union's position.

FOR THE UNION:
(SGD.) P. Vickers
General Chairman

FOR THE COMPANY:
(SGD.) M. Marshall
Senior Manager Labour Relations

There appeared on behalf of the Company:

M. Marshall	– Senior Manager Labour Relations, Toronto
D. Gagne	– Senior Manager Labour Relations, Montreal
W. Glass	– Senior Engine Service Officer, Toronto
V. Paquet	– 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
P. Vickers	– General Chairman, Sarnia
P. Boucher	– Arbitrator Coordinator, Ottawa

J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Niagara Falls
R. Beatty	– President, TCRC, Ottawa
P. Proudlock	– Locomotive Engineer, Toronto
B. Ermet	– Vice General Chairman, Winnipeg
B. Willows	– General Chairman, Edmonton

AWARD OF THE ARBITRATOR

This grievance is in the nature of a policy grievance, obviously prompted by the facts considered in CROA&DR 4205. A central issue raised in this grievance is whether, as the Union maintains, it is not appropriate for a CLO to operate a locomotive “in the absence of the locomotive engineer”, as for example if the locomotive engineer should be required to move to an adjoining locomotive or, as occurred in CROA&DR 4205, to make use of a washroom on the locomotive with the door closed.

The Arbitrator must confess to a substantial degree of concern with the instant grievance. Issues such as appropriate training, operating procedures and the supervision of railway employees fall properly within the jurisdiction of the Transportation Safety Board of Canada. The primary task of this Office is to deal with disputes in respect of the administration or interpretation of collective agreements.

In this grievance the Union asks the Arbitrator to issue declarations, including a direction that a “...CLO - qualified Conductor may only operate the engine while under the direct supervision of the Locomotive Engineer, ... this direct supervision requires a minimum that the Locomotive Engineer be present in the cab while the Conductor is at the controls.” It further seeks a declaration that “...the CLO’s operation of the control

stand is within the Locomotive Engineer's discretion, having regard to the circumstances at hand, including the Conductor's experience level, the conditions of the track, and such other relevant considerations".

For its part, the Company seeks a determination from the Arbitrator that a locomotive engineer does not have an unfettered discretion and that, harkening to the facts dealt with in case 4205, that there is no discretion for locomotive engineer to stop a train on the main line rather than make use of a qualified CLO to operate the train for a short period of time.

Having heard the representations of both parties I consider it appropriate to make certain comments, albeit it must be understood that they are not made in the context in any particular fact situation.

Firstly, as a general matter, there is nothing in the Rules that have been presented to this Office which would preclude a locomotive engineer from allowing a CLO to operate a locomotive for a brief period while the locomotive engineer absents himself from the cab of the locomotive. To the extent that the locomotive engineer can remain in voice contact with the CLO, whether by radio or otherwise, the concept of direct supervision is not violated. That said, it may be that in an extreme circumstance, for example should a locomotive engineer remove himself to a second locomotive for an excessive and unnecessary period of time, the obligation of direct supervision might well be considered to be abandoned.

From the standpoint of the application of the collective agreement, there obviously may be circumstances in which a locomotive engineer absents himself or herself from the cab for period time, in operating circumstances, that will be inconsistent with the concept of proper direct supervision. While no hard and fast rule can be established, and common sense must prevail overall, its clear that each case must depend on its own facts. It is obviously appropriate for locomotive engineer to make his or her own judgement about the experience and ability of any CLO with whom he or she is assigned to work. Likewise, an engineer's discretion includes the ability to make reasonable and good faith decisions as to the kind of territory through which a CLO may be entrusted with the operation of a locomotive, considering such factors as the length and weight of the train, the complexity of signals and switches, the presence of other traffic, topography, including grades and curves and any other factors which might bear on the simplicity or complexity of the operation of a train movement. Obviously there will be matters of judgement and discretion, as for example the time at which locomotive engineer might choose to hand the control to a CLO to prepare a meal, to use a washroom, or to briefly attend to an operational need which might arise in a secondary locomotive. It may not, for example, be reasonable for a locomotive engineer to surrender control of a train in relatively complex or hazardous running circumstances. Conversely, it would not be unreasonable for locomotive engineers to entrust the operation of their locomotive to a CLO as their train proceeds through relatively straight forward operating territory where train handling complexities are at a minimum. Given that all CLO's are trained and qualified by the Company, a locomotive engineer cannot simply purport to exercise his discretion to effectively block his or her

CLO from ever engaging in the operation of their locomotive. It also goes without saying that to the extent that some CLO's may be more comfortable, experienced or skilled than others in the operation of a locomotive, the nature and degree of supervision which a locomotive engineer feels compelled to exercise may vary correspondingly.

It is obviously not for this Office to purport to promulgate rules with respect to the correlative duties and obligations of locomotive engineers and CLO's. Jurisprudential wisdom would suggest that questions of that kind will be best answered by real rather than hypothetical cases arising out of actual events and their related discipline and grievances as they may evolve on a case by case basis.

May 17, 2013

MICHEL G. PICHER
ARBITRATOR