

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4312

Heard in Montreal, May 14, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union claims that under Articles 2.14, 2.15, 2.16 of the 4.16 Collective Agreement, Conductors are entitled to payment for assisting the Locomotive Engineer to pick up or set out diesel unit (or units) involving their consist.

UNION'S EXPARTE STATEMENT OF ISSUE:

On June 25, 2013, Mr. Beatty, while working as the conductor on train M31331 24, claimed an LC payment under article 2.14 of the Collective Agreement for assisting the Locomotive Engineer to pick up a diesel unit, BCOL 4617, adding it to their locomotive consist.

This work was done at approximately 1700. Conductor Beatty lifted unit BCOL 4617 and added it to the CN 2332 and performed a brake test. Conductor Beatty claimed an LC payment for \$9.66 for assisting the engineer under article 2.14 of the 4.16 Agreement. The pay office recovered this payment on July 25, 2013.

In the alternative, the Union claims that the Company has a past practice of paying Conductors who assist the Locomotive Engineers to set out or pick up a diesel unit (or units) involving their locomotive consist and that therefore the Company is estopped from discontinuing this payment.

The Union is seeking Mr. Beatty is repaid the amount claimed. The Union further asserts that under Addendum 123 a Remedy is applicable.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
M. Marshall	– Senior Labour Relations Manager, Toronto

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson

AWARD OF THE ARBITRATOR

At issue in the instant case is the interpretation and application of Articles 2.14 to 2.16 of the Collective agreement relating to payment for picking up or setting out diesel units. Those Articles read as follows:

2.14 Conductors called for road service who assist the Locomotive Engineer to set out or pick up a diesel unit (or units) involving their locomotive consist will be paid an allowance of:

(a) Picking up one or more than one unit already coupled or setting out one or more than one unit together —

EFFECTIVE

July 23, 2007	July 23, 2008	July 23, 2009
\$8.42	\$8.67	\$8.93

EFFECTIVE

July 23, 2007	July 23, 2008	July 23, 2009
\$13.96	\$14.37	\$14.81

2.15 The term "unit (or units)" refers to a unit which is coupled in the locomotive consist and is in charge of the Locomotive Engineer who is assisted by the Conductor making a claim under this paragraph.

2.16 Payments claimed pursuant to this paragraph will not be allowed on shop tracks and/or at other locations where shop staff are on duty and available to perform the work required.

The grievance arises in relation to work performed by conductor CR Beatty, on June 25, 2013. The Union maintains that the grievor was then required to assist the locomotive engineer in lifting and switching the locomotive consist at their home terminal of Horne Payne.

The nature of the dispute is well captured in the Company's letter of reply to the grievance at Step 3 which reads, in part, as follows:

The Company has reviewed Mr. Beatty's work history and notes that in making his claim on June 25th, he lifted the 4617 and performed a brake test as part of the assembly of his consist for train M31331 25, at approximately 1700. It is the Company's position that there is no payment due for building/assembling the consist that you are going to work with. More specifically, the payment entitlement under article 2.14 is for setting out or picking up units involved their locomotive consist. It is the Company's position that their locomotive consist is the power that they be performing work with. Thus, there may be some assembly required prior to establishing that consist. This position is consistent with and supported by provisions covered in the 1.1 collective agreement, which provide for payment to the locomotive engineer for assembling his consist. Thus, Mr. Beatty's claim was properly recovered.

The Company is in agreement that once the consist is established, adding or subtracting units to your consist may draw payment, however; in the instant case Mr. Beatty was required to assemble the consist he was going to work with. Although, this draws a payment for the locomotive engineer, there are no equivalent articles for payment over and above pay for other service for employees governed under the 4.16 Agreement.

The Arbitrator has substantial difficulty with the Company's position as reflected in the letter of January 7, 2014, the Step 3 response. The Company takes the view that the initial assembling of a locomotive consist is not captured by the language of Article 2.14. I can see no compelling basis for that analysis of the language in question. As appears from the terms of article 2.14 the payment there contemplated is payable to a conductor who assists the locomotive engineer in setting out or picking up a diesel unit "involving their locomotive consist". While I can appreciate the Company's interpretation that the article has no operation until such time as a consist is established, that view is in my opinion simply not sustainable on the basis of the language of this provision.

In my view the phrase “involving their locomotive consist” is relatively broad, and must, absent clear language to the contrary, be taken to mean the setting out or picking up of diesel units that will be involved in the composition of the locomotive consist of a conductor’s train in road service. There is nothing in the language of article 2.14 to suggest, as the Company maintains, that the article is not intended to apply to the initial assembly of a locomotive consist, so that article 2.14 only applies to picking up or setting off the units in a previously established locomotive consist. Nor is there anything counter intuitive with respect to the payment of wages for the assembling of consists, insofar as locomotive engineers are admittedly compensated for that work.

From the standpoint of pure interpretation, I am persuaded that the view of the Union must be accepted. That said, however, concern arises with respect to the fact, as stressed by the Company’s representatives, that for a substantial number of years there have been relatively few claims such as that made by Mr. Beatty, and in fact it appears that the Union has not brought forth any grievance such as in the instant case. In that regard the Company cites the fact that since the commencement of 2008 roughly only one in ten trips resulted in LC claims made by conductors. In effect, the number of claims and the Union’s relative silence in respect of this issue over a period of several years does, in my view, give rise to the application of an estoppel.

For the foregoing reasons, the grievance is allowed, in part. The Arbitrator finds and declares that the interpretation of article 2.14 advanced by the Union in the instant grievance is correct. Given the failure to grieve the matter over several years, however,

I am satisfied that it is appropriate to conclude that the Union is estopped from making the claim which is here under consideration for the balance of the term of the existing collective agreement. The parties will then have the opportunity to address this matter at the bargaining table, and absent any change in the language, on a go forward basis the Union's interpretation will thenceforth apply.

May 20, 2014

MICHEL G. PICHER
ARBITRATOR