

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

CASE NO. 4646

Heard in Montreal, July 11, 2018

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union's appeal of the Company's declination of a runaround claim by Locomotive Engineer J. Powell alleging he was run around when Locomotive Engineer Reid departed Sioux Lookout in a taxi, prior to Mr. Powell being run, in accordance with Article 32.1. It is the position of the Union that this was avoidable and should attract payment as is contemplated in Article 32.2.

JOINT STATEMENT OF ISSUE:

On June 27, 2014, Locomotive Engineer Powell was ordered for train M31331-25 at Sioux Lookout to Winnipeg for 1020 hrs. Locomotive Engineer Reid, who was behind Mr. Powell on the calling board at Sioux Lookout, was called to deadhead for 1100 hrs. Due to the late arrival at Sioux Lookout of train M31351-25, Mr. Reid departed the change off point at Sioux Lookout in a taxi to Winnipeg, before Mr. Powell's train arrived at the change off point.

The Union insists that the Company avoidably ran around Mr. Powell when it allowed Mr. Reid to depart the station in a taxi to Winnipeg, prior to Mr. Powell being run.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) K. C. James

General Chairman

FOR THE COMPANY:

(SGD.) M. E. Galan for K. Madigan

Vice President Human Resources

There appeared on behalf of the Company:

- M. Galan – Manager, Labour Relations, Edmonton
- K. Morris – Senior Manager, Labour Relations, Edmonton

And on behalf of the Union:

- K. Stubeing – Counsel, Caley Wray, Toronto
- K. C. James – General Chairman, Edmonton
- M. King – Senior Vice General Chairman, Edmonton

AWARD OF THE ARBITRATOR

Nature of the case

1. This case raises two issues. First, does the concept of “runaround” in article 32 of the collective agreement apply to situations where one locomotive engineer (LE) departs by train and another deadheads? Second, did CN violate the collective agreement when it called LE Powell first, but, due to his train’s late arrival, he left Sioux Lookout after LE Read had already left in a taxi?

2. For the reasons which follow, before deciding the specific train vs. deadhead issue, the arbitrator will wait for a future case where the parties comment in detail on their negotiated wording in article 32.

3. Even if one assumes article 32 applies to LE Powell’s and LE Read’s situation, the arbitrator concludes that CN respected its collective agreement obligations. CN assigned LE Powell first. He started work almost an hour before LE Read arrived to deadhead in a taxi. This Office’s case law has already determined that later events which impact the time of departure do not change the interpretation and application of article 32.

Facts

4. LE Powell stood first in priority over LE Read on the calling board at the “away from home terminal” of Sioux Lookout. This meant that LE Powell was first in line to be called to depart Sioux Lookout.

5. CN called LE Powell for the 10:20 train M31331. Under the collective agreement, LE Powell reported 15 minutes earlier at 10:05 to prepare. CN pays LE Powell for these preparatory duties.

6. CN called LE Read for 11:00 to deadhead by taxi and bus back to the home terminal in Winnipeg. The parties do not dispute that CN called both LE Powell and LE Read properly. Neither do they dispute that LE Powell had been performing paid work for 55 minutes prior to LE Read arriving for deadheading. LE Powell would be paid more for operating the train compared with LE Read who would deadhead.

7. The dispute arises from a delay in train M31331's arrival. After LE Read had departed Sioux Lookout at 11:00 in a taxi, LE Powell took charge of his train at 11:20. He serviced the cab from 11:20 to 11:35. LE Powell's train departed Sioux Lookout at 12:00, roughly 60 minutes after LE Read's departure.

8. CN submitted that it had not known M31331 would be delayed when it called LE Powell for duty. Transport Canada limits on duty hours for LEs. Had CN known M31331 would not arrive until after 11:00 then it submitted it would not have called LE Powell to start work at 10:05 (E-1; Company brief; Paragraph 53). The evidence did not suggest that CN knew at the time of the call that LE Powell would leave Sioux Lookout later than LE Read.

9. The TCRC argued that the circumstances entitled LE Powell to a 100-mile payment under article 32.2 of the collective agreement. In its view, once CN knew of the train delay, it should have allowed LE Powell to replace LE Read and depart first in the taxi. LE Read would have then taken train M31331 back to Winnipeg.

Collective Agreement Language

10. Article 32 of the collective agreement is titled “Running of Locomotive Engineers in Pool Service”. Article 32.1(a) establishes the “run first-in first-out” principle:

32.1(a) Locomotive engineers in pool service will be run first-in, first-out from the shop track or change off point on their respective subdivision or subdivisions, except as hereinafter provided.

11. The Sioux Lookout yard office/bunkhouse was the “change off point” for the purposes of this case. LE Powell arrived there at approximately 09:45 to report for duty (U-1; Union brief; Paragraph 24).

12. Article 32.2, titled “Runaround”, provides a remedy for failing to respect the “run first-in first-out” principle:

32.2 In the application of paragraph 32.1(a) a locomotive engineer who is first-out and available and is runaround avoidably will be paid 100 miles at minimum through freight rate for each runaround and will maintain his position on the board.

13. Article 32.2 notes that even in cases of a runaround, no payment is owing for unavoidable runarounds.

14. Pursuant to article 1.8 of the collective agreement, if an LE has combined service during a tour, then he/she will be paid for all hours at the higher rate:

1.8 Locomotive engineers performing more than one class of road service during a tour of duty will be paid for the entire tour of duty at the highest rate applicable to any class of service performed.

Analysis and Decision

15. This case raises two issues. First, does article 32 apply to a situation where an LE is called to operate a train while a second LE is called to deadhead in a taxi? Second, did CN respect the obligations the collective agreement imposed on it to “run first-in first-out” LE Powell?

Does article 32 apply in a train vs. deadheading situation?

16. The parties advised that this case is a test case. Approximately 50 other similar cases remain pending.
17. The TCRC argued that a run is a run. Both LE Powell and LE Read were “run” on the day in question, but out of sequence. Their mode of transportation was irrelevant.
18. CN argued that article 32 cannot apply to a train vs. deadhead scenario, but only for situations involving two trains (E-1; Company brief; paragraphs 27 and 38):

27. The Company argues that the language in 32.1 confirms the requirement of calling locomotive engineers who are first available on the working board in such order to ensure they operate a locomotive off the shop track or change-off point first. It does not speak to taxis.

...

38. In their grievance, the Union stated that Mr. Read departed the outer switch ahead of Mr. Powell hence the runaround payment is applicable. The outer switch for the grievor's westbound train (M313) is located one mile west of Sioux Lookout on the mainline. This argument cannot be accepted because Mr. Read departed by taxi and thus does not go past an outer switch.

19. Article 32 contains articles 32.1 to 32.13. Many of those articles use railway terminology and terms of art which could impact the determination of the train vs deadheading issue. As this Office noted in [CROA&DR 4631](#): "Given their expertise and experience in the railway industry, the parties' detailed comments on their negotiated collective agreement wording provide invaluable assistance to any arbitrator's interpretation exercise".

20. Given that some of the 50 pending cases could be impacted by a decision on the train vs. deadheading issue, the arbitrator will await a case where the parties can provide a full textual analysis of article 32 and any other relevant articles. The arbitrator prefers not to interpret the deadheading issue in a vacuum when much of the article 32 terminology requires explanation from those who perform railway work daily.

21. In any event, due to the arbitrator's overall conclusion as explained below, it was not necessary to decide the train v. deadhead question to apply article 32 to LE Powell's specific situation.

Did CN violate article 32's "run first-in first-out" principle for LEs Powell and Read?

22. The arbitrator concludes that CN respected its collective agreement obligations. Later unanticipated delays do not retroactively change a proper application of the "run first-in first-out" principle into a collective agreement violation. The parties disagreed whether a "no scoop" provision in Winnipeg ensured LE Powell maintained his calling priority, but this does not impact the interpretation of article 32.

23. CN applied article 32's "run first-in first-out" principle properly in the following ways:

- i) CN called LE Powell in priority to LE Read for a higher paying assignment;
- ii) The train to which CN assigned LE Powell was expected to leave before LE Read would arrive to deadhead;
- iii) LE Powell started work for his assigned run 55 minutes before LE Read arrived for his deadheading; and
- iv) It was the late arrival of LE Powell's train, an event which occurred after CN had called him in proper priority, which caused him to depart later than LE Read.

The concept of "taking charge"

24. The TCRC referred to varying expressions of the phrase "took charge of his engines" as the suggested key point for determining whether LE Powell was "run first-in first-out" (U-1; Union brief; paragraphs 26; 29; 43; 44; 45; 46; 48; 56; and 57). Article 32 does not contain any "take charge" type of terminology, though this expression does appear in previous cases this Office has decided.

25. [CROA&DR 885](#) determined an article 32 runaround dispute involving two trains.

Arbitrator Weatherill referred to the time when the LE “took charge of the diesel units”:

Train No. 302 arrived at the designated change-off point, Track No. 1 at Rivers, at 0315, and the grievor there took charge of the diesel units and thereafter performed work of the usual sort, pulling the train to the east end of the yard and making an air test. As a result of that, cars had to be set off, and the train, for whatever reason, was moved back to Track No. 1. There was, thus, substantial delay, and there was further delay as the grievor decided (no doubt properly) to switch the lead engine. The result was that Train No. 302 departed Rivers at 0655.

(Emphasis added)

26. The delays described with the grievor’s Train 302 meant an LE with lower priority left the terminal first and also arrived at his destination first:

Train No. 748 arrived at Rivers at 0540, and departed for Winnipeg at 0550. The engineman called to take over the train at Rivers stood after the grievor in calling order. Of course that engineman was called after the grievor, but because of the delays to Train No. 302, he in fact left the terminal at Rivers, and thus arrived in Winnipeg, before the grievor, whereas in the normal course the grievor would not only have been called first (as he was) but would have left Rivers first and (barring other delays) would have arrived in Winnipeg first.

27. On those facts, Arbitrator Weatherill concluded no runaround had occurred under the negotiated wording in article 32.1:

The grievor was, under this Article, entitled to be “run” ahead of the other engineman, who was after him on the call list. This does not mean that he was entitled to complete his “run” from Rivers to Winnipeg ahead of anyone else. The use of the verb “run” in Article 32 should not be confused with the use of the noun “run” which has a different significance. The effect of the term used in Article 32.1 is clear when the whole expression is read: the employee at the top of the call list is to be “run (in order) from the shop track or change-off point”.

28. Arbitrator Weatherill further commented on the concept of picking up the train and concluded that the grievor had been “run first-in first-out” despite leaving and arriving later than an LE with lower priority:

It is immaterial, in this case, whether the grievor picked up his engines on the shop track or change-off point. In fact, he picked up his train at the change-off point, and began the work which was necessary (it turned out to be more than anticipated) in connection with his run. He had, then, been called in turn, and was in fact “run first-in, first-out from the change-off point”. The collective agreement does not provide any greater priority than that, and the grievor was not “runaround” in these circumstances, any more than he would have been had his train broken down en route to be passed by one which had been called later.

29. The decision also considered the scenario whether the LE with priority could have been switched to the other train once it became clear which one would leave first:

While it might, in this particular case, have been possible to take the grievor off his train and have him change places with the other engineman, there are no doubt many other situations where such an exchange would not be practical. What is conclusive, of course, is that the Collective Agreement does not require such exchanges. The grievor was run in his turn from the change-off point. That met the requirements of the Collective Agreement, and that fact was not altered by subsequent events.

30. Both parties relied on Arbitrator Weatherill’s decision, but for different propositions. CN argued that LE Powell had been called first and was therefore not runaround. The TCRC argued that LE Powell had not been run until he took charge of his engines. He could not do this until train M31331 had arrived at the change-off point.

31. In [CROA&DR 1587](#), Arbitrator Picher dealt with a similar fact scenario to that examined by Arbitrator Weatherill. In that case, an LE with priority left later than the LE who was below him on the list:

In this case it is not disputed that Locomotive Engineer P. Langstaff was properly called in advance of another employee, Locomotive Engineer Koniaz, to man Train 818. In fact Engineer Koniaz departed Winnipeg before Engineer Langstaff because of mechanical difficulties which the latter encountered during the course of his inspection of the unit assigned to him.

32. The parties in that case disputed the proper application of the “run first-in first-out” principle:

The Union submits that the foregoing provisions entitled the grievor to leave Winnipeg first, based on the application of the "first-in, first-out" principle. The Company submits that its obligation was discharged by calling Engineer Langstaff first, as it did, and that in the circumstances he cannot be said to have been runaround.

33. Arbitrator Picher dismissed the grievance for the same reasons provided by Arbitrator Weatherill in **CROA&DR 885** and also referred to the “take charge” concept:

In the instant case, the facts are close to identical. Engineer Langstaff was delayed because of mechanical problems discovered at the time he took charge of the locomotive, in his case, from the shop track rather than from a change-off point. During preparations for departure, like the grievor in CROA 885, he encountered mechanical difficulties. In the result, while he was called in advance of Engineer Koniaz, he was delayed in his departure, just as he might have been delayed by some unforeseen problems in midroute.

In the circumstances the Arbitrator is satisfied that the Company has applied the collective agreement consistent with the interpretation

established in CROA 885, and in keeping with the provisions of article 32 of the collective agreement.

34. Neither of these decisions specifies whether the LEs in question had already started their assignment prior to “taking charge” of their engines. Would this impact the application of article 32.1 in this case?
35. The arbitrator has concluded that LE Powell was “run first-in first-out” for the purposes of article 32 when he was called first and started working 55 minutes before LE Read arrived to deadhead. As this Office’s case law notes, the “run first-in first-out” principle does not mean that LE Powell’s train must actually leave and arrive first.
36. CN provided LE Powell with all the priorities to which he was entitled including being called first, starting work first and receiving the higher paying assignment. A subsequent delay in the train’s arrival did not change CN’s proper application of the collective agreement into a violation.
37. If article 32 had contained the expression “take charge” in relation to the engines, then the TCRC might have persuaded the arbitrator that that specific event determined the proper interpretation of article 32. But article 32 does not contain any such reference. Neither were any other articles raised which suggest that a “take charge of engines” concept determines when someone is “run”. This presumably

could not occur for deadheading, if one were to accept that someone could be “run” in this fashion.

38. Moreover, as the earlier CROA decisions illustrate, article 32 does not guarantee that the person with calling priority will leave and arrive first at the destination before another LE.

39. Article 32 ensures that the person with priority is “run first-in first-out”. CN provided LE Powell with this priority. If article 32 applies to a train vs. deadhead situation, then LE Powell also obtained the higher remunerative work when compared with LE Read.

40. These facts do not fit comfortably with the concept of a runaround which was described in [CROA&DR 3](#) as one employee being called for work out of priority:

The term run-around was explained as being applicable to a situation where an employee who should normally be called for work is not and such work is given another.

41. Looked at from a different perspective, the arbitrator finds no instance where LE Read had an entitlement to any of LE Powell’s priorities. Could LE Read have demanded to be called in priority to LE Powell? No, because that would be a clear runaround.

42. Does article 32 somehow give LE Read an entitlement, based on the factual scenario in this case, to force LE Powell to deadhead so that he could operate M31331 and receive the higher remuneration? This argument is not persuasive given that LE Powell had already performed the paid preparatory work necessary to operate M31331.
43. If CN had decided to switch the LE assignments, as the TCRC suggested it should have, to ensure LE Powell left first, then it appears he still would have been entitled to the higher remuneration. It is difficult to reconcile how LE Powell's work preparing to operate train M31331 could not satisfy the "run first-in first-out" principle but could still entitle him to the financial benefits flowing from article 1.8's wording on combination service.
44. The arbitrator notes the TCRC's concern about what would have happened if LE Powell's train had never arrived (U-1; Union brief; Paragraph 59). That scenario differs from the facts in this case, however. LE Powell's train was 4 miles away at the time when LE Read left the change off point.
45. The TCRC did not persuade the arbitrator that the fact LE Powell's train arrived later than scheduled distinguished his situation from those in CROA&DR 885 and 1587 where subsequent events caused the person with priority to leave later than another LE.

46. The parties could negotiate that the “take charge” concept determines when a run starts for the purposes of article 32. Similarly, they could negotiate that an LE like LE Powell must be switched in the circumstances of this case to ensure he leaves first.
47. It is understandable why an LE would want to leave and arrive first at the home terminal. But the arbitrator cannot impose these modified terms without amending the collective agreement, something that a rights arbitrator has no power to do.
48. For these reasons, the arbitrator dismisses the grievance.

July 27, 2018



GRAHAM J. CLARKE
ARBITRATOR