

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4080

Heard in Montreal, Thursday, 12 January 2012

Concerning

BOMBARDIER TRANSPORTATION CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Claim on behalf of N. Gordon-Tenant that he was called out of turn while assigned to the spareboard.

JOINT STATEMENT OF ISSUE:

On June 7, 2011, the grievor submitted a number of wage claims when he was called out of his turn while assigned to the spareboard. The Company declined the payments on the basis that the grievor lacked the proper qualifications to be entitled to make the claims based on their interpretation of the MOA Item 9.12.

The Union's position is that Mr. Gordon-Tenant properly made a wage claim in accordance with MOA 9.12 which makes provision for a penalty payment for a spare employee called out of turn equal to the hourly training rate and requested payment of the submitted wage claims.

The Company cannot be bound by conditions outside of its control. A fully qualified train operator must have 2 years of experience as fully qualified commuter train operator to train a throttle trainee. Mr. Gordon-Tenant qualified in March 2011 and does not meet the requirements to train and does not qualify for any training or premium associated with training. The Company does not believe that it should be negatively impacted when an employee is unable to meet the criteria required to receive the training premium.

The Company declined the Union's request.

FOR THE UNION:
(SGD.) G. MACPHERSON
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) A. BROWN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Horvat – Counsel, Toronto
 A. Brown – Manager, Human Resources, Toronto
 D. Mitchell – General Manager Operations, Toronto

There appeared on behalf of the Union:

M. Church – Counsel, Toronto
 G. MacPherson – General Chairman, Toronto

AWARD OF THE ARBITRATOR

It is common ground that the grievor was called out of his turn off the spareboard to protect an assignment on June 7, 2011. That happened because the grievor was the first available employee on the spareboard familiar with the territory in question. In fact the grievance relates to some twelve instances where that occurred between May 30 and June 17, 2011. The grievor claims entitlement to a training allowance although it is understood that no unqualified or unfamiliar locomotive engineer accompanied him.

The Union relies, in part, on the following provisions of the collective agreement:

9.12 If a spareboard employee first out is not sufficiently qualified to take the call such that it makes it necessary for the call to be given to a spareboard employee not first out, for qualification purposes the unqualified spareboard employee first out is sent to protect the assignment with the qualified spareboard employee. Article 20.1 or Article 20.3 applies whether or not the unqualified employee is sent to protect the assignment with the qualified employee. Effective December 31, 2012, if the Company is unable to send the first out employee for familiarization the employee called out of turn will be paid a four (4) hour claim for that assignment in lieu of the training premium. The claim will not be use[d] in the calculation of the weekly guarantee and weekly overtime.

20.1 When training a throttle trainee or a fully qualified Train Operator during the familiarization, Train Operators will be compensated \$4.50 per hour training premium, which will be executed in the calculation of overtime.

...

- 20.3 When in the OJT period of a new Train Operator, Train Operators will be compensated \$4.00 per hour training premium, which will be excluded in the calculation of overtime.

In essence the Union submits that whether or not the person who was first up on the spareboard, but unfamiliar with the territory, was sent to work with the grievor, he was entitled to the payment of the training premiums contemplated under article 20.

The Company submits that the provisions of article 20 can have no application to the grievor because he has less than two years' service as a locomotive engineer. In that regard it relies on the following excerpt from the **Railway Employee Qualification Standards Regulation** made pursuant to the **Canada Transportation Act**, S.C. 1996 c. 10, s 15(b):

No railway company shall qualify a person as an on-job training instructor for the occupational category of locomotive engineer unless the person

...

(b) completes not less than two years service as a locomotive engineer, including at least three months service in the area where the locomotive engineer is to give the on-job training.

After considerable reflection, I am compelled to share the interpretation of the provisions reproduced above which is advanced by the Company. The wording of section 15(b) of the regulation is, in my view, clear and straightforward. A person is not to be qualified as a training instructor in relation to any training for locomotive engineers unless they have two years' service as a locomotive engineer. In my view it is entirely appropriate to conclude that the use of the word "training" as found in articles 20.1 and 20.3 of the collective agreement is to be interpreted in a manner consistent with the regulation.

I cannot share the characterization of what transpires under these provisions as the equivalent of “piloting”, as suggested by counsel for the Union. Piloting, which commonly occurs when train movements of one company are required to move over the territory of another railway, with the assignment of a guide to the territory is, in my view, a substantially different matter than the familiarization of an employee with a given subdivision. I am satisfied that what is contemplated in article 20, and by extension in article 9.12 of the collective agreement is an actual training function, which is more than simple piloting.

In these circumstances I agree with the Company that the fundamental protections of section 15(b) of the **Regulation** which governs on the job training for locomotive engineers is properly interpreted to mean to that the grievor could not be qualified to perform training, including training in the form of familiarization. Indeed, it would appear that it is for that reason that the Company does not assign an unqualified locomotive engineer to accompany a person of the grievor’s experience who is given an assignment out of turn on the spareboard.

For all of the foregoing reasons the grievance must be dismissed.

January 16, 2012

(signed) MICHEL G. PICHER
ARBITRATOR