

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2044

Heard at Montreal, Thursday, 12 July 1990

Concerning

### ALGOMA CENTRAL RAILWAY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Failure to agree on additional Yard Crews consisting of one Yard Foreman and one Yard Helper for the Steelton Main Terminal.

#### **JOINT STATEMENT OF ISSUE:**

On July 21, 1989 notice was served upon the General Chairman of the United Transportation Union (T) by the Company of its desire to meet with representatives of the Union with respect to reaching agreement on a reduced crew consist for 1500-2300 hour Yard Shift and Yard Relief Crew for the Steelton Terminal.

A meeting was held on July 31, 1989 between the Company and the General Chairman of the Union at which no agreement was reached except that the Organization requested a survey of yard shifts as provided for in Article 70(A).

On August 9, 1989 the Company advised the Union that a consecutive working day survey of the 1500-2300 yard would be requested be conducted. The survey was conducted November 2 December 8, 9, 10 and 11 of 1989.

On December 28, 1989 the Company served notice on the Union of their intention to survey the duties performed by the Relief Yard Crew on five consecutive Wednesdays - January 10th, 17th, 24th, 1990; February 7th, 14th, 1990.

Additional meetings on March 21, 1990, April 27, 1990 and May 8, 1990 failed to achieve agreement on the proposed yard crew consist.

The Company contends that the results of both surveys supported its view that adequate safety, stipulated in clause (b) as the determining factor in establishing a crew consist reduction, could be maintained on the two separate yard assignments with a crew consist of one Yard Foreman and one Helper.

The General Chairman of the Union in a letter dated February 20, 1990, listed specific reasons why in his opinion adequate safety could not be maintained with a reduced crew consist unless the following concerns were addressed.

- (1) Federal Legislation in respect to safety whereas more responsibility is on the Yard Foreman and Yard Helper.
- (2) Public crossings within Steelton Yard.
- (3) Track grade.
- (4) Track curvature especially Coach Yard, Car Shops and Algoma Steel.
- (5) Radio communication.
- (6) Payloader, hoists, workers and public crossing in Yard.
- (7) Remote engines and switching operations in Algoma Steel.
- (8) Road engines in Yard Service.
- (9) Algoma Steel, Dominion Bridge (Welded Beam) Lajambe, St. Mary's Paper and Dubreuil Lumber.

**FOR THE UNION:FOR THE COMPANY:**

**(SGD) J. H. SANDIE**  
GENERAL CHAIRPERSON

**(SGD) V. E. HUPKA**  
FOR: PRESIDENT - RAIL

There appeared on behalf of the Company:

V. E. Hupka – Manager, Industrial Relations, Sault Ste. Marie  
N. L. Mills – Superintendent, Transportation, Sault Ste. Marie  
J. H. Gardner – Labour Relations Officer, Sault Ste. Marie

And on behalf of the Union:

J. Sandie – General Chairperson, Sault Ste. Marie

**AWARD OF THE ARBITRATOR**

The Union lists nine factors which it maintains militate against the introduction of reduced crews on the 1500-2300 Shift and Yard Relief Crew, for the Steelton Terminal. The material discloses that since 1972 there has been an unrestricted reducible crew agreement between the Company and the Union in respect of switching in the Steelton Yard on the 0600-1400 shift. Subject to the limitations of the attrition rules which govern the Company's ability to actually schedule reduced crews, that agreement has been in operation without negative incident since that time.

The chief concerns raised by the Union are the congestion of the yard, the curvature of its tracks, the consistent downhill grade from one end to the other of the yard and the interaction of switching operations with both level crossings and the separate switching activities of the Algoma Steel Corporation on adjacent and interlinking trackage. These concerns appear to the Arbitrator to be entirely legitimate. They are, however, concerns which would obtain equally during the day shift hours, as during the 1500-2300 hour Yard Shift that is the subject of this application. It would appear to the Arbitrator that the record of experience discloses that in the circumstances obtaining in Steelton Yard switching with reduced crews can and has been safely performed, on a consistent basis, with the use of radios which have become fully implemented as a means of signal communication in yard switching operations.

I must agree with the Company that the comments of Arbitrator Weatherill in **CROA 756** concerning the safety of switching with the use of radio communications in reduced crew operations within a congested yard with substantial areas of track curvature do support its position in this case. Needless to say, as that case concerned a CN yard located in Oshawa, each case must be resolved having regard to its own particular facts. The issue before me is whether the Company can implement a reduced crew to operate on the 1500-2300 Yard Shift at Steelton Yard at Sault Ste. Marie in a manner that is sufficiently safe.

As a general matter I am satisfied that it can. As noted above, reduced crew yard assignments have been performed for close to twenty years on the day shift, where the same conditions of congestion, track curvature, grade, level crossings and customer operations have obtained without substantial change. Nor is there sufficient evidence to satisfy the Arbitrator that the recent implementation of an automated yard engine in the Algoma Steel Company's operations substantially changes that reality.

In considering the overall question of safety, however, there is a further aspect to be considered. Nothing in the determination by the Arbitrator for the purposes of this case that a reduced crew can safely be implemented in respect of the tour of duty in question can derogate from the rights and obligations of yard service employees in respect of the Uniform Code of Operating Rules, or in respect of the right of an employee to decline to perform unsafe work. While the Union has made much of the possibility of radio failure, it appears that that is not a frequent occurrence. In those exceptional circumstances where it does arise, employees retain the ability to take such steps as may be provided by the UCOR and the **Canada Labour Code**, as the case may be. No doubt such circumstances may arise, but their mere possibility is not justification for declining the application of the Company.

For the foregoing reasons the Arbitrator finds that the proposal of the Company to operate a reduced crew consist for the 1500-2300 Hour Yard Shift and Yard Relief Crew for the Steelton Terminal can be implemented in a manner consistent with the maintenance of adequate safety, and its request is accordingly allowed.

July 13, 1990

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR