

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3043

Heard in Montreal, Thursday, April 14, 1999

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

Application of Articles 2 and 41 of Agreement 4.16.

COUNCIL'S STATEMENT OF ISSUE:

Since September 1998, crews in freight service operating between Montreal and Garneau or Sorel and vice versa have been required to switch cars between the various yards within the greater Montreal terminal. This, in the opinion of the Union, is contrary to the provisions of articles 2 and 41 of agreement 4.16.

The company disagrees with the position of the Union, alleging that the switching performed by the main line crews is switching "in connection with their own train".

COMPANY'S STATEMENT OF ISSUE:

Since approximately September 6, 1998, crews assigned to Trains 364, 366, 367, 368 and 369, in through freight service between Taschereau Yard and Garneau Yard, have been required either to pick up (for trains travelling west) or set off (for trains travelling east) cars at the Rivière des Prairies Yard, located within the Montreal switching limits.

Crews assigned to Train 449, between Sorel and Taschereau Yard are also required to pick up cars at Southwark Yard, located within the Montreal switching limits.

The Union claims that this contravenes the provisions of Articles 2 and 41 of the collective agreement.

The Company disagrees.

FOR THE COUNCIL:

(SGD.) R. LEBEL
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. LAURENDEAU
GENERAL MANAGER, CHAMPLAIN DISTRICT

There appeared on behalf of the Company:

D. Laurendeau	– District Labour Relations Associate Champlain District
J-C Santerre	– Superintendent – Transportation, Montreal
J. Pasteris	– Manager, Labour Relations, Montreal
C. Perras	– Manager, Market Development, Montreal

And on behalf of the Council:

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| R. LeBel | – General Chairperson, Quebec City |
| R. J. Long | – General Chairperson, Yard, Brantford |
| M. P. Gregotski | – Former General Chairperson, Fort Erie |
| S. Aubin | – Local Chairperson, Montreal |
| S. Morin | – Vice-Local Chairperson, Montreal |
| R. Doiron | – Local Chairperson, Montreal |
| J. Collett | – Witness |
| R. Dyon | – General Chairperson, BLE, Montreal |

AWARD OF THE ARBITRATOR

This case involves the application of article 41.1, which reads as follows:

41.1 Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yard service employees are employed, be considered as service to which yard service employees are entitled, but this is not intended to prevent employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

It is well established that this article has been incorporated into the collective agreement in order to clearly specify the work reserved exclusively for yard service employees. Road service employees are forbidden from performing switching tasks within the switching limits determined for a given location. The exception to this rule allows a road service crew to perform only the “switching required in connection with their own train and putting their own train away ...”.

The facts pertinent to the grievance are not in dispute. Road service crews operating trains travelling from Garneau Yard in Quebec City to Taschereau Yard in Montreal must pick up cars at the Rivière des Prairies (R.D.P.) Yard on their way into Montreal and transport them to Taschereau Yard, which is the final terminal for their train. Since both yards are located within the Montreal switching limits, the Union maintains that the practice in question, i.e., picking up or setting off cars while en route, constitutes a switching operation that contravenes article 41.1 of the collective agreement, and claims that the employees in question must then be paid separately, at yard service employee rates.

The company maintains that this practice in no way contravenes the article in question. The Company’s representatives argue that cars picked up or set off are part of the road crew’s train, since they become part of the same consist that will be transported, by another train crew, to Toronto, without any other switching being performed. According to the Company, for the purposes of applying article 41.1, the expression “their own train” refers to the train travelling from Garneau, in Quebec City, to Toronto. From this perspective, the crew operating the train from Garneau to Taschereau is only being called upon to perform switching in connection with “their own train” in that cars picked up at R.D.P. Yard will be transported to Toronto, via Taschereau, as part of the, same train.

The Arbitrator cannot accept the Company’s interpretation. Clearly, the train travelling from Garneau to Taschereau may be made up of several “blocks” of cars, some of which will be sent on to Toronto, and others to Ottawa or elsewhere. Furthermore, the “train” arriving at Taschereau Yard from Garneau is not necessarily the same “train” that then leaves for Toronto. For the purposes of article 41.1, the expression “their own train” must essentially be understood as referring to the specific train operated by a road service crew, and not to a number that the Company may assign to a collection of cars that may travel further, operated by another road service crew.

In the instant case, the Garneau crew, which is required to pick up cars when it arrives at the Rivière des Prairies Yard in Montreal, in order to set them off at Taschereau Yard, is not performing this work as switching in connection with their own train. On the contrary, they are performing this task to build another train, whose composition will be different and which will be operated by another road service crew. For the purposes of job security, it is that reality which is the underlying intention of article 41.1. It cannot be bypassed by the manipulation of the number which the Company assigns to one or several trains, without regard to their particular composition, or to the crews which are assigned to them.

It is true, as Company's representatives suggest, that this interpretation implies distinctions that are arguably inconsistent. For example, the parties agree that the road service crew assigned to transport the train from Taschereau to Toronto may pick up the cars in question at R.D.P. Yard without violating the provisions of article 41.1, in that this task would unquestionably be in connection with "their own train". However, it is not within the jurisdiction of the Arbitrator to bend or change the meaning of the words which the parties have agreed upon in order to establish their mutual rights and obligations. If discussion is required to reach a compromise or determine a different definition for the expression "their own train", it is a matter for negotiation, not arbitration. I must interpret the collective agreement as I find it, in accordance with established jurisprudence (see **CROA 11, 203, 1590, and 2286**). As well, article 7.19 of the collective agreement, which deals with payment for work performed by a road service crew arriving at a destination terminal, does not apply for purpose of bypassing article 41.1, that is evident from a reading of subparagraph 7.9(d). Article 7.7 is equally inapplicable, as it deals with the system of pay, and not with the right of employees to perform certain switching tasks. The same conclusion flows from the application of article 4 of the March 29, 1992 agreement concerning crews which are reduced to conductor only.

For these reasons, the grievance is allowed. The Arbitrator declares that the practice whereby the Company requires that road service employees pick up or set off cars within the Montreal switching limits, as described in this award, constitutes a violation of article 41.1 of the collective agreement. The Arbitrator hereby orders that the claims filed with respect to this practice be paid, and remains seized in the event of any dispute concerning the interpretation or implementation of this award.

April 16, 1999

(signed) MICHEL G. PICHER
ARBITRATOR