

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

CASE NO. 3459

Heard in Montreal, Tuesday, 14 December 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
LOCOMOTIVE ENGINEERS**

DISPUTE:

The Company's violation of articles 1.7, 57.1 and 57.3 (a) resulting from the abolishment of assignment 545-546 at Winnipeg effective June 20, 2004, and the establishment of two (2) road switcher assignments at Brandon, MB – 545 Road Switcher effective July 2, 2004 and 545B Road Switcher effective July 23, 2004.

JOINT STATEMENT OF ISSUE:

The Union takes the position that the Rivers Subdivision has always been considered by the Union and the Company to be territory under the jurisdiction of the home station of Winnipeg. With respect to the Carberry Subdivision, this has been the case for a least the last thirty years. In other words, all assigned and unassigned trains operating over the Carberry Subdivision and in single sub service east of Rivers on the Rivers Subdivision have been manned from the home station of Winnipeg. In the Union's opinion, this is supported by the collective agreement and by many years of past practice and calling procedures at both Winnipeg and Brandon.

In addition, the Union contends that the Company's unilateral decision to establish Brandon as the home station of 545 Road Switcher and 545B Road Switcher assignments and to abolish 545-546 assignment at Winnipeg is contrary to the spirit and intent of article 57.3 (a). Similarly, the designation of these assignments as road switchers does not circumvent the impact of article 57.3 (a) in that locomotive engineers home stationed at Winnipeg have jurisdiction on the Carberry and Rivers Subdivisions.

It is additionally the Union's position that the work which the Company has assigned to the 545 and 545B Road Switcher assignments; that is running approximately one hundred and fifty-six point four (156.4) miles to deliver traffic from the terminal of Brandon to the terminal of Rivers and return was never contemplated by the parties in the context of article 1.7 – Road Switcher Service.

The Union has requested that the Company immediately cease and desist from the practice of utilizing Brandon home-stationed locomotive engineers on territory which is not under their jurisdiction and properly reassign that work to the home terminal of Winnipeg. In addition, all Winnipeg based locomotive engineers who lost work opportunities subsequent to the abolishment of 545-546 assignment must be compensated for their loss of earnings.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) D. E. BRUMMUND

FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. LAIDLAW

FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

- B. Laidlaw – Manager, Labour Relations, Winnipeg
- R. Smith – Assistant Superintendent, Winnipeg

And on behalf of the Union:

- D. E. Brummund – Sr. Vice-General Chairman, Edmonton
- B. Willows – Vice-General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

This grievance arises by reason of the Company having established two road switcher assignments home terminalled at Brandon, Manitoba. The assignments in question operate northeastward from Brandon, over the Carberry Subdivision to Petrel Junction and from Petrel Junction onward in a westerly direction over a portion of the Rivers Subdivision to Rivers, Manitoba. They then return over the same territory from Rivers back to Brandon. It is not disputed that the area serviced by the road switchers falls within a thirty mile radius of the originating terminal of Brandon, although the Union stresses that the assignments, being in excess of 156 miles and incurring an overtime frequency rate of over 80%, are highly unusual for what is normally contemplated as a road switcher. It is not disputed that through freight traffic between Winnipeg and

Brandon, as well as between Winnipeg and Rivers, has been handled exclusively by locomotive engineers home terminalled at Winnipeg. The Union's representatives submit that in the circumstances described the Company was not at liberty to assign the work to crews home terminalled at Brandon who, it submits, are restricted to performing work on the Cromer Subdivision, west of Brandon. The Union submits that the Brandon based employees do not operate on either the Carberry Subdivision or the Rivers Subdivision, territory which it maintains is exclusive to Winnipeg based locomotive engineers.

The Union invokes paragraph 57.3 (a) of article 57 of the collective agreement, which provides as follows:

57.3 Except when otherwise arranged between the General Chairman of the B. of L.E. and the appropriate officer of the Company, the following will apply when establishing the home station of assigned or unassigned service.

(a) Trains operating over territory entirely under the jurisdiction of one home station will be manned from that station.

The Union maintains that the territory between Brandon and Rivers has been exclusively handled by locomotive engineers home terminalled at Winnipeg for some thirty years. It seems that some years ago there was an assignment home terminalled at Brandon, operating northeastward over the Carberry Subdivision to a location north of Petrel Junction. That assignment has not operated for many years, following the apparent abandonment of the track north of Petrel Junction.

The Company submits that its entitlement to assign the road switchers as it did is found in article 1.7 of the collective agreement. That article provides, in part, as follows:

Road Switcher Service

1.7 Locomotive Engineers assigned to Road Switcher service operating on a turnaround basis within a radius of 30 miles from the shop track switch at the initial terminal will be compensated at a rate per day in excess of the basic daily wayfreight rate as follows:

...

Locomotive Engineers may be run in and out and through their regularly assigned initial terminal without regard for rules defining completion of trips. Time to be computed continuously from the time locomotive engineers are required to leave shop track until the locomotive arrives at the shop track at end of day's work.

The Company's representative submits that article 1.7 defines not only the scope of work which can be performed by road switcher assignment, but the jurisdiction of such assignments.

With that submission the Arbitrator has substantial difficulty. The jurisdiction of assignments is expressly dealt with under article 57.3 of the collective agreement. Indeed that article bears the heading "Jurisdiction". Article 1.7 does define road switcher service and makes relatively elaborate provision for the payment of such service at a rate per day which is in excess of the basic daily wayfreight rate, with relatively detailed provisions governing what constitutes a day's work and the payment of overtime. In that context the Arbitrator is satisfied that the references to running in and out and through a regularly assigned initial terminal "without regard for rules defining completion of trips" is

intended not to govern the jurisdiction of the assignment but, rather, to give clarity to the method by which road switcher assignments are to be compensated.

An alternative argument advanced by the Company is the operation of article 57.3 (d) of the collective agreement, which reads as follows:

(d) Trains operating over territory under the jurisdiction of two or more home stations and only touching one home station will be manned from that station.

The Company's representative notes that the road switcher assignments which are the subject of this grievance are bulletined to operate not only on the Carberry and Rivers Subdivisions, but also to perform certain assignment on the Cromer Subdivision, west of Brandon. Those assignments involve handling OCS cars and materials in and out of a spur track at Ralston, some 25 miles west of Brandon. The undisputed evidence, however, is that work at that location is performed very rarely, and was done on only two occasions since the establishment of the road switcher in July of 2004. It would appear fair to say that that argument, as well as the invoking of article 1.7 as a basis for jurisdiction, is at the root of the Union's criticism of the Company's position as being tantamount to sharp practice. In fairness to the Company, however, its fundamental position is that the Carberry Subdivision falls under the jurisdiction of Brandon based locomotive engineers as well as Winnipeg based locomotive engineers. Its representative notes, for example, that on occasion Brandon crews have switched the cars at the military based located at Shilo, on the Carberry Subdivision, although the

Union denies any knowledge of such work having been performed and questions its propriety.

The Arbitrator also remains in some doubt with respect to the principal argument advanced by the Union. It relies on the provisions of article 57.3 (a), which are as follows:

57.3 Except when otherwise arranged between the General Chairman of the B. of L.E. and the appropriate officer of the Company, the following will apply when establishing the home station of assigned or unassigned service.

(a) Trains operating over territory entirely under the jurisdiction of one home station will be manned from that station.

It is trite to say that the provisions of a collective agreement must be read in a rational and complementary fashion. In the Arbitrator's view the provisions of article 57.3 (a) cannot be read in isolation from the separate provisions of article 57.3 (b) which read:

53.7 (b) Trains operating over only a portion of a subdivision will be manned by the home station from which the run begins.

The foregoing provision addresses the specific circumstance of a train operating over only a portion of a subdivision. It stipulates that jurisdictionally that train is to be manned by crews from the home station from which the run begins. In my view, it is the provisions of that article which most directly speak to the facts of the instant case and most properly resolve the grievance at hand.

Given the language of article 57.3 (b), it can scarcely be disputed that the Company would be at liberty to assign a Brandon based crew to perform switching at locations such as Shilo and Carberry, since that assignment would involve the road switcher operating over only a portion of the Carberry Subdivision. The collective agreement is clear that such an assignment is to be manned by the home station from which it begins. In the Arbitrator's view the situation is no different by reason of the fact that the road switcher assignment in fact operates over only a portion of the Rivers Subdivision, between Petrel Junction and Rivers. The spirit of article 57.3 (b) appears relatively clear: where an assignment involves operating over only a section of a subdivision, such an assignment can be manned by the home station from which the run begins. The article represents a mutual recognition by the parties that where only a portion of a subdivision is being serviced, the home station of convenience can be looked to supply crews for that assignment. That is, moreover, consistent with the general understanding of the parties that a road switcher can operate within a thirty mile radius of its home terminal.

In the result, whether from a literal or from a purposive standpoint, the position of the Company must be sustained. Literally, the assignment which are the subject of this grievance operate over only a portion of the Rivers Subdivision, and can therefore be manned from the "home station from which the run begins". From a purposive standpoint, the work in question is within the ambit of what the parties have

contemplated to be within the thirty mile radius assignment of road switchers, as recognized in article 1.7 of the collective agreement.

In the alternative, if the foregoing analysis were incorrect, the Arbitrator would be compelled to find that the Company's position based on the application of article 57.3 (d) of the collective agreement is also correct. While it appears that work on the Cromer Subdivision is not frequent, it is nevertheless part of the assignment which is the subject of this grievance. Bearing in mind the fluctuating nature of work which can be performed by a road switcher, the facts would then fall within the contemplation of article 57.3 (d), as the road switcher would operate over territory under the jurisdiction of both the home stations of Brandon and Winnipeg. As the assignment would touch only one home station, Brandon, it would be properly manned from that location.

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

December, 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR