

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

CASE NO. 3462

Heard in Montreal, Wednesday, 15 December 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Policy grievance filed under the provisions of article 84 of agreement 4.16. The Union alleges that the Company has violated the collective agreement by maintaining that employees can “swap trains” while enroute. The Company denies that it has violated the collective agreement.

JOINT STATEMENT OF ISSUE:

The dispute that gives rise to the grievance concerns Conductor Paul Cassidy. On March 6, 2004, Conductor Paul Cassidy was taken off train 363 (enroute) and placed on Train 103 (enroute).

The Union (although not limited hereto) argues that the Company was in violation of the collective agreement in particular Rule Notice #010423-51 of April 2001. This ruling states that “Trading of Trains is not allowed enroute”.

The Union requests that the Company cease and desist from violating the collective agreement and to comply with the collective agreement.

The Company denies that it has violated the collective agreement and therefore has denied the Union’s request.

FOR THE UNION:

(SGD.) R. A. BEATTY
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) D. VANCAUWENBERGH
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

B. Hogan – Manager, Labour Relations, Toronto
J. Coleman – Counsel, Montreal

J. Krawec – Manager, Labour Relations, Toronto
D. VanCauwenbergh – Manager, Labour Relations, Toronto

And on behalf of the Union:

R. A. Beatty – General Chairperson, Sault Ste. Marie
D. Ellickson – Counsel, Toronto
J. Robbins – Vice-General Chairperson, Sarnia
T. Beatty – Local Chairperson, Belleville
C. Little – Vice-Local Chairperson, Belleville

AWARD OF THE ARBITRATOR

The Union submits that over many years of consistent practice the Company has applied the calling and assignment provisions of the collective agreement in such a manner that employees were never required to commence an assignment in straightaway service on one train, and be instructed to stop their train enroute and take over the operation of another train in the same direction. That is what transpired on March 6, 2004 in the assignment of Conductor Cassidy enroute from Belleville to Toronto.

The Company's representatives maintain that there is nothing in the collective agreement which would prevent the Company from making the direction which it did to Conductor Cassidy on that occasion. The Union strongly resists that argument, submitting that the application of the calling and crew assignment provisions of the collective agreement have never been so interpreted. The Arbitrator finds it unnecessary, for the purposes of this grievance, to deal with that relatively important

dispute of interpretation. I am satisfied that the instant grievance must be allowed on an alternative basis.

The record before the Arbitrator reveals that for a time the parties utilized a system of dispute resolution which allowed the possibility of agreed "rulings" by which they would both be bound, at least in the geographic jurisdiction where the ruling was made. The record reveals that on May 15, 2001 the parties met to consider an objection by the Union to an assignment given to Conductor MacEachern. The ruling notice, which was issued as a result of the parties' consultation, describes the issue as arising from the fact that Conductor MacEachern was

"ordered to operate train 106 from Hornepayne to Capreol. Prior to arrival at Capreol the crew was instructed to leave train 106 at Macwaw, a siding west of Capreol, and then to take train 102 from Macwaw to Capreol."

As stressed by the Union's representative, the fact situation involving Conductor MacEachern was identical to that concerning Conductor Cassidy on March 6, 2004, albeit on a different subdivision. Significantly, as reflected in the ruling document, the conclusion drawn by the agreement of the parties is as follows:

"Not allowed under the agreement."

In the Arbitrator's view, at a minimum, in light of the foregoing ruling, the Company must be considered to have accepted the interpretation of the Union which is argued in this case, namely that Conductor Cassidy could not be properly directed to

operate in straightaway service from Belleville to Toronto on two separate trains. On that basis, and on that basis alone, the grievance must be allowed. Whether the larger issue of interpretation advanced by the Company is correct is not a matter on which the Arbitrator deems it necessary to comment for the purposes of this grievance. It is obviously a matter which the parties may address at the bargaining table.

For the foregoing reasons the Arbitrator finds in favour of the Union, based on the mutual ruling which is quoted above. The Company is directed to cease and desist from a violation of the ruling for the duration of the collective agreement and to compensate Conductor Cassidy for the additional earnings claimed.

December 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR