

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

CASE NO. 3490

Heard in Montreal, Wednesday, 15 June 2005

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Union Policy Grievance – “Travel Between Port Huron, Michigan and Sarnia (and vice versa) – The Union submits, *inter alia*, that the Company is in violation of Articles 6.1(b), Article 9.9, Article 17.2 and Article 85.3 of Agreement 4.16

JOINT STATEMENT OF ISSUE:

The Company, although grieved by the Union, consistently directs Sarnia (freight) based employees to travel from the home terminal of Sarnia to Port Huron, Michigan, to report for duty at Port Huron. In addition, the Company, although grieved by the Union, consistently directs Sarnia (freight) based employees to go off duty at Port Huron and thereafter travel to the terminal of Sarnia.

In consideration of the above the Union, *inter alia*, first submits that Sarnia based employees can only go on and off duty, respectively, at the terminal of Sarnia. The Union submits that any change in this application is a violation of Article 85.3 of the collective agreement. It is the Union’s position that freight employees who are required to travel between Sarnia and Port Huron are entitled to either a deadhead payment (Article 17.2) or, in the alternative, may be put into combination service under the provisions of Article 63.

In the alternative to the above position the Union submits that employees who are required to do off duty or report for duty at Port Huron and are required to travel to/from Sarnia are entitled to the payment as provided in Article 9.9.

Alternatively, the Union submits that employees who are required to go off duty or report for duty at Port Huron and are required to travel to/from Sarnia are entitled to a basic day for such travel under the provisions of article 6.1(b) of the collective agreement.

The Union has, in consideration and application of the above, requested that the Company: 1.) Cease and Desist from violating the collective agreement. 2.) Comply with the collective agreement. 3.) Pay all time claims as submitted with respect to the Company’s violations of the collective agreement.

It is the Company's position that Port Huron is a yard within the terminal of Sarnia.

In respect to crews going off duty at Port Huron, the Company states that Article 23 (Travel Allowance) of Agreement 4.16 applies as written.

The Company will argue that Articles 6.1(b), 9.9, 17.2, 6.3 and 85.3 are either not applicable in this case or have not been contravened.

The Company will argue, therefore, in the absence of any other negotiated agreement on travel between points identified at Sarnia and/or Port Huron, the Collective Agreement – Article 23 is applicable to Sarnia based crews, who go on duty or are released from duty at Port Huron.

The Company disagrees with the Union's position in these matters.

The matters in dispute are properly before the Arbitrator for resolution.

FOR THE UNION:

(SGD.) R. A. BEATTY
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) J. KRAMEC
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

D. VanCauwenbergh	– Sr. Manager, Labour Relations, Toronto
D. Gagné	– Manager, Labour Relations, Montreal
B. Hogan	– Manager, Labour Relations, Toronto
B. Olson	– Regional Manager – Training,
J. Torchia	– Senior Manager, Labour Relations, Edmonton
E. Posniak	– General Manager, Operations, Toronto
D. Brodie	– Manager, Labour Relations, Edmonton
D. Fournier	– Regional Manager, CMC

And on behalf of the Union [among others]:

J. Robbins	– Vice-General Chairman, Sarnia
R. A. Beatty	– General Chairman, Sault Ste. Marie
W. G. Scarrow	– Vice-Local Chairman, Sarnia
Gary Anderson	– Vice-General Chairman,
B. Boechler	– General Chairman, Edmonton
A. Weir	– Local Chairman, Sarnia
T. Hopwood	– Local Chairman, Sarnia

AWARD OF THE ARBITRATOR

It does not appear disputed that historically the only trains that could travel through the St. Clair tunnel at Sarnia as single consists under their own power were passenger trains. All freight movements through the St. Clair tunnel were handled by either Sarnia or Port Huron

Yard crews. It is common ground that Port Huron is part of the Greater Sarnia Terminal. In 1985 the Company initiated the first road freight service which would, with the agreement of the Union, operate through the St. Clair tunnel and go off duty in Port Huron. Conversely, trains originating in Port Huron would be handled by a Sarnia road crew who would operate it from Port Huron through the tunnel and onwards towards Toronto. The institution of that service, with the assent of the Union, resulted in an agreement which not only allowed the Company to operate Sarnia road freight crews into and out of Port Huron, through the St. Clair tunnel, but also a corollary agreement whereby employees going off duty at Port Huron or on duty at that location were to be paid a one hour arbitrary for the time required to travel between the Sarnia Yard and the Port Huron Yard. Subsequently, with the construction of a new tunnel, a second agreement was executed on March 9, 1995 allowing, in part, for an arbitrary payment of one hour and fifteen minutes in each direction between the Port Huron Yard and the Sarnia Yard.

Commencing in January of 2004 an issue arose between the parties concerning the overlap of terminal time payments and arbitrary payments, both being claimed by employees going on or off duty at Port Huron and travelling to or from Sarnia. It does not appear disputed that they are not entitled to the terminal time payments on top of the arbitrary. When the Company indicated its intention to recover the payments made in error, by letter dated September 3, 2004 the Union gave the Company the required thirty day notice to cancel the Sarnia/Port Huron Travel Allowance Memorandum of Agreement dated March 9, 1995. The Union maintains that thereafter employees are entitled to claim an additional day's work for deadheading from Port Huron Yard to Sarnia Yard. A claim was made, for example, on October 20, 2004 on behalf of Conductor C. Knight for a deadhead claim under article 17.2 of the collective agreement for his travel from Port Huron to Sarnia. On November 5, 2005 the CMC declined the payment of the 100 miles deadhead, but allowed payment of forty-five minutes in accordance with article 23.1(a) of the collective agreement.

The Union submits that article 23.1(a) of the collective agreement has no application as it was intended to apply only to employees in passenger service. The Union submits that the Company's actions violate article 6.1(b), article 9.9, article 17.2 and article 85.3 of the collective agreement.

After careful consideration of the submissions, the Arbitrator has substantial difficulty with the position of the Union. As a matter of first principle, it has long been established within the jurisprudence of this Office that employees are not entitled to deadheading payments for movement between the yards of a single terminal. That cornerstone principle was established in the decision of Arbitrator Hanrahan in **CROA 2**. In that case the predecessor of the Union claimed the entitlement to deadheading payments of employees who were required to travel from Symington Yard to the Winnipeg Station, all within the terminal of Winnipeg. In the words of Arbitrator Hanrahan, with respect to the deadheading rule now contained in article 17 of the collective agreement:

In other words, travelling between two points within a terminal when not on duty is not recognized as calling for payment under that rule.

The Union, which bears the burden of proof in this grievance, has referred the Arbitrator to no other circumstance in which employees are paid under the deadheading rule for their travel between yards within a single terminal, notwithstanding that a number of addenda and local agreements have been made for travel allowances, as for example in addendum nos. 28, 29, 34, 51, 52, 68, 77 and 87 of the collective agreement.

Perhaps the most significant example of the understanding of the parties with respect to the remuneration of travel between yards within a single terminal is to be found in article 23 of the collective agreement. It provides as follows:

**ARTICLE 23
Travel Allowance**

23.1 Where employees travel between yards or stations in one of the terminals listed below:

(a) Where it is their home terminal, it is required to report for duty in one yard or station and, on return to that terminal, is released from duty at another yard or station; or

(b) where it is their away-from-home terminal, after being released from duty at one yard or station and required to report for duty for the next trip at another yard or station in that terminal;

shall, where a travel allowance is specified below, qualify for such travel allowance and be provided with transportation between the points concerned free of charge.

NOTE: Train Service Employees who travel between locations as listed hereunder will be paid the allowance so specified irrespective of the next location where they report for duty.

Terminal	Points Between Which Travelled	Travel Allowance
Halifax	Halifax Station – Fairview Roundhouse	30 minutes
Saint John	Saint John Station Island Yard or Resthouse	30 minutes
Moncton	Moncton Hump Yard	30 minutes
	Passenger Station Moncton Hump Yard – Bus Station	30 minutes
Edmundston	Edmundston Bus Station – Yard Office	20 minutes
Joffre	Joffre – Charny	15 minutes
	Joffre – Ste. Foy	30 minutes
	Joffre – Levis	60 minutes
	Joffre – Quebec Central Bus Terminal	60 minutes
Montreal	Joffre – Limoilou	60 minutes
	Taschereau Yard – Central Station	60 minutes
	Taschereau Yard – Pt. St. Charles Yard	60 minutes
	Taschereau Yard – Turcot Yard	45 minutes
	Taschereau Yard – Bus Station	60 minutes
	Central Station – Turcot Yard	45 minutes
	Pt. St. Charles Electric Shop Turcot Yard	45 minutes
Ottawa	Pt. St. Charles Yard – Central Station	45 minutes
	Turcot Yard – Bus Station	45 minutes
	Ottawa Station Walkley Yard	30 minutes
	Walkley Yard or Ottawa Station – Bus Station	45 minutes

London	London Yard – London Station	30 minutes
Sarnia	Sarnia Passenger Station Sarnia Freight Yard	30 minutes
	Port Huron Passenger Station Sarnia Freight Yard	45 minutes
	Port Huron Passenger Station Sarnia Passenger Station	45 minutes

23.2 The payments provided for in paragraph 23.1 shall be at the rate of pay of the service completed at the home terminal and at the rate of pay of the service for which ordered at the away-from-home terminal.

23.3 Payments made under this Article shall not result in duplicate payment.

It is common ground that the above provisions governing the travel allowance applicable within the Sarnia Terminal was negotiated at a time when the only road movements from Sarnia through the St. Clair tunnel to Port Huron, or *vice versa*, were passenger trains. It is on that basis that the Union argues that the provisions therein do not apply to trains in road freight service. While the Arbitrator can understand the historic logic of that submission, in my view, having regard to the cornerstone rule established in **CROA 2**, it is difficult to see what travel allowance employees moving within different parts of the Sarnia Yard can claim if it is not under article 23. To the extent that the Company takes the position that article 23 does apply, allowing the employer's position in this grievance would save the Union from the risk of employees at Sarnia being returned to the same position as the grievors in **CROA 2**, namely having no entitlement to any travel allowance. If the Company is willing to be bound by an interpretation of the provisions of article 23 as being generally intended to cover all train movements, including freight, between Sarnia and Port Huron, the Arbitrator is reluctant to reject that interpretation if the alternative is to leave the Union with nothing whatsoever.

I am satisfied that the claim under article 17.2 cannot succeed in light of the decision of this Office in **CROA 2**. I must agree with the Company that the Company has not violated article 6.1(b) which defines a basic day as an entitlement to 100 miles, by failing to pay that amount for the three miles of travel between Port Huron and Sarnia. Nor am I satisfied that the mere act of

travelling between Port Huron and Sarnia can qualify as extra service as contemplated within article 9.9 of the collective agreement. Further, the facts do not disclose the performance of work in more than one class of service in the sense contemplated by article 63 of the collective agreement. It is difficult to see on what basis travel from one yard to another yard within a given terminal can be described as any form of service when an employee has gone off duty. This is not a circumstance of combination service.

In the result the Arbitrator finds that the interpretation of the Company must prevail. I am satisfied, given the position of the Company that it is bound by the provisions of article 23 in the circumstances disclosed, that that interpretation must prevail absent any other agreement between the parties.

For all of the foregoing reasons the grievance must be dismissed

June 20, 2005

(signed) MICHEL G. PICHER
ARBITRATOR