

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

CASE NO. 3583

Heard in Montreal, Tuesday, 10 October 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Union grievance alleging a violation of article 41 – Transfer Work when the Company arbitrarily and unilaterally altered the point of interchange between CSXT Railway and CN Railway within the terminal of Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

On 31 January 2006, the Company utilized a CSXT crew to transfer cars from Track KO99 to a location within CN's main Sarnia Yard, and vice versa. The Union cites a violation of article 41 as outlined in the time claim of C. Lawrence dated 31 January 2006, as the initial time claim grievance. And as well, the similar grievances which are being held in abeyance as per the parties' understanding of 16 May 2006.

Beginning on 31 January 2006, the Company has utilized CSXT assignments to transfer traffic between the CN/CSXT transfer, referred to as Track KO99, and Sarnia Yard. The transfer of the traffic was wholly within the recognized switching limits of Sarnia yard.

Mr. Lawrence submitted a claim for 8 hours' pay as per articles 48, 49, 56 and 61 of agreement 4.16, citing a violation of article 41. The Union relies on the provisions of articles 41 and 57 of agreement 4.16 in the determination of the work entitlement. It cannot be reasonably argued that the transfer of cars between CSXT interchanges and Sarnia Yard has been performed by other than those governed by Agreement 4.16.

The Company met with the Union prior to making this change and advised them in writing on 29 January 2006 of the proposed revision of the operation and strategy to grow this business segment. This letter resulted in an exchange of correspondence highlighting differences of opinion. It is the Company's position that the relocation of the point of interchange within a terminal does not violate the provisions of article 41 or any other article of agreement 4.16. Further, it is the Company's assertion that the traffic in question was not transferred within the switching limits of Sarnia Terminal. The Company, as a result, declined the Union's grievance.

FOR THE UNION:

(SGD.) J. M. ROBBINS
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) J. P. KRAWEC
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| D. VanCauwenburgh | – Sr. Manager, Labour Relations, Toronto |
| J. P. Krawec | – Manager, Labour Relations, Toronto |
| T. E. Brown | – Superintendent, Sarnia |
| D. Gagné | – Manager, Labour Relations, Montreal |

And on behalf of the Union:

- | | |
|----------------|--------------------------------------|
| J. M. robbins | – Vice-General Chairperson, Sarnia |
| M. A. Church | – Counsel, Toronto |
| T. Hopwood | – Local Chairperson, Sarnia |
| A. Weir | – Local Chairperson, Sarnia |
| B. R. Boechler | – General Chairperson, Edmonton |
| R. A. Hackl | – Vice-General Chairperson, Edmonton |
| D. Bolianaz | – Local Chairperson, Winnipeg |

AWARD OF THE ARBITRATOR

In this matter the Union bears the onus of establishing that the Company has violated the provisions of the collective agreement. As reflected in the joint statement of issue, the Company relocated the interchange for CSXT assignments from the previous interchange point, Track KO99, to the Sarnia “A” Yard. In the result, CSXT crews which service industrial enterprises on CSXT near Sarnia now carry their collected cars beyond the former transfer point, track KO99, and move further within switching limits to deposit their cars in Yard “A”. This, the Union alleges, violates article 41.1 of the collective agreement. That article reads as follows:

41.1 Except as provided in article 12 of agreement 4.16, the following will apply: 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 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. Upon arrival at the objective terminal, road crews may be required to set off 2 blocks of cars into 2 designated tracks.

The Arbitrator has some difficulty with the Union's interpretation and application of the foregoing provision. While on the facts of the case the Union's representative submits that CSXT crews are in fact performing switching and transfer work inside the switching limits of the Sarnia Yard, by reason of their manipulating the cars which they bring into the yard by utilizing tracks KO99 and KO98 to re-position their locomotive at the head-end of the movement, in fact their objection goes further. The Union submits that not only is that operation in violation of article 41.1, but it also maintains that the CSXT crews cannot travel over any part of the CN yard territory beyond track KO99 at Sarnia without violating article 41.1 of the collective agreement. Obviously, to the extent that the CSXT crews now deposit their cars in the Sarnia "A" Yard, they do travel some distance within the Sarnia Yard switching limits to deposit their cars at the new transfer point within the "A" yard.

In the Arbitrator's view the Company is correct in its interpretation of article 41.1. Its representative stresses, and the Arbitrator agrees, that that article is devoted to switching, transfer and industrial work which happens "wholly within the recognized switching limits". The primary purpose of article 41.1 would appear to be a delineating of the respective work jurisdictions of yard and road crews, as reflected in the cases cited by the Union. Moreover, the operation performed by the CSXT crews cannot fairly be characterized as being wholly within the switching limits of the Sarnia Yard. It is clear that the CSXT crews expend a significant portion of their assignment gathering cars from local industries on CSXT's own tracks, and that the delivery of those cars to the

Sarnia "A" Yard is only a part of their assignment. In other words, the transporting of the cars in question, for the purposes of effecting the transfer of the cars to CN, does not occur wholly within the recognized switching limits. It is a continuous CSXT operation of local industrial work coupled with the delivery of the cars so assembled to a designated transfer point within Sarnia Yard.

What has transpired is plainly not the transfer of cars by CSXT crews wholly within the switching limits of Sarnia Yard, as that concept is understood within the operation of article 41.1 of the collective agreement. Obviously that provision would be violated if CSXT crews, for example, picked up cars within the switching limits of the Company's yard at Sarnia, and transferred them to some other point within the same yard. That is not what has occurred with respect to the change of the point of interchange put into effect by the Company. Nor does the fact that the CSXT crew might break up its consist at tracks KO98 and KO99 to allow their engine to run-around and re-couple at the front of the movement change the essential nature of the work which those crews are performing. They are not performing switching or transfer work wholly within the switching limits of Sarnia Yard.

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

October 16, 2006

(signed) MICHEL G. PICHER
ARBITRATOR