

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

**CASE NO. 3585**

Heard in Montreal, Tuesday, 10 October 2006

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**EX PARTE**

**DISPUTE:**

Engineering personnel performing UTU bargaining unit work within yard switching limits contrary to article 102.1 of Agreement 4.3.

**UNION'S STATEMENT OF ISSUE:**

At various locations throughout Western Canada, Engineering Department employees have been observed switching, transferring cars, performing construction and maintenance work, as well as work train service within the switching limits where UTU yard service employees normally work.

UTU members have submitted time claims, which have been declined, for the loss of work resulting from this practice. Several grievances have been filed with respect to this matter.

The Union contends and maintains that, pursuant to article 102.1 of agreement 4.3 of the UTU collective agreement, this work properly ought to be performed by UTU employees.

The Union requests that those employees who have lost earnings be made whole and that the Company cease and desist violating this provision.

The Company disagrees.

**FOR THE UNION:**

**(SGD.) R. A. HACKL**  
**FOR: GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

- K. Morris – Manager, Labour Relations, Edmonton
- D. VanCauwenbergh – Sr. Manager, Labour Relations, Toronto
- R. W. McGirr – Assistant Superintendent, Winnipeg
- C. N. C. Yeroschak – Manager, Egnineering

And on behalf of the Union:

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

### **AWARD OF THE ARBITRATOR**

The Union's claim in the case at hand is based upon the application of article 102.1 of the collective agreement which reads as follows:

**102.1** Yard service employees will do all transfer, construction, maintenance of way, and work train service exclusively within switching limits, and will be paid yard rates for such service. Switching limits to cover all transfer and industrial work in connection with terminal. This paragraph shall apply only at locations which are listed in paragraph 112.6 of article 112.

Essentially, the Union grieves against what it maintains is the improper assignment of work which belongs to yard crews into the hands of members of the Maintenance of Way Department, including employees and managers. Specifically, by way of example, it maintains that when OCS cars, such as cars containing ballast, are moved about the yard by means of a speed-swing, track-mobile or other self-propelled vehicle, operated by a member of Maintenance of Way bargaining unit, the Company is in violation of article 102.1 of the collective agreement. Counsel for the Union submits

that that article gives to yard service employees all construction and maintenance of way work within switching limits.

The Arbitrator has substantial difficulty with that submission. The language of article 102.1 as it appears in the instant collective agreement is in all material respects, essentially identical with the language of article 4(b) of the predecessor collective agreement, collective agreement 4.22 which was considered by this Office in **CROA 69**. The only difference is that the final sentence of article 102.1 as it appears in the current collective agreement was subsequently added. The Arbitrator cannot see in that amendment any substantial change in the essential meaning the first sentence of the article.

In **CROA 69** the predecessor union grieved the moving of some twelve gravel cars by means of a self-propelled crane, as part of track maintenance work apparently then being performed in Symington Yard. In the Arbitrator's view the work then under consideration is indistinguishable from the examples of work which give rise to this grievance. Each example placed before the Arbitrator involves the movement of OCS cars or equipment under the power of a self-propelled speed-swing, track-mobile, crane or similar self-propelled vehicle, all in furtherance of maintenance of way work within the yards. A careful review of **CROA 69** reveals that the result of that award is to find that the collective agreement gives a precedence of work to yard crews in respect of construction and maintenance of way work within switching limits where locomotives are used. Arbitrator Hanrahan specifically found that the jurisdictional claim of the Union

could not be supported "... to include these unusual types of equipment, self-propelled machines, with their own distinctive functions, differing from that type of equipment, requiring the traditional crew common to yard engines.

In the Arbitrator's view the parties must be taken to have gone forward from the time of **CROA 69**, renewing successive collective agreements without any material change to article 102.1, knowing that they were effectively adopting the meaning and interpretation of that article reflected in **CROA 69**. It must be found that they have implicitly agreed that when OCS cars are being handled within switching limits for the purposes of performing of maintenance of way functions, and are powered by vehicles such as the speed-swing or track-mobile, the work in question cannot be claimed by yard crews within the instant bargaining unit. Obviously, the mere use of such self-propelled vehicles would not trump the Union's jurisdictional rights if, for example, they were being utilized to actually perform the switching of revenue cars, as opposed to OCS cars being used for maintenance of way or construction functions. For the purposes of clarity, therefore, it must be understood that this award finds in favour of the Company solely on the basis that the cars being handled other than by the means of a yard engine are OCS cars, in the course of performing construction or maintenance of way functions. In that circumstance it is entirely open to the Company to utilize the services of a member of another bargaining unit, or of management, to operate a speed-swing, track-mobile or similar vehicle, subject of course to any restrictions which may appear in the collective agreement which governs maintenance of way personnel.

For the foregoing reasons the grievance must be dismissed

October 16, 2006

**(signed) MICHEL G. PICHER**  
ARBITRATOR