

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

CASE NO. 3620

Heard in Edmonton, Wednesday, 13 June 2007

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Payment of claim submitted by Locomotive Engineer B.W. Blair of Edmonton, Alberta, pursuant to article 12 and Addendum 40 of agreement 1.2 for work performed Edmonton Intermodal Terminal.

UNION'S STATEMENT OF ISSUE:

On July 5, 2006, Locomotive Engineer Blair was ordered on Train A44351-05 from Mirror to Edmonton, Alberta. Upon arrival at Greater Edmonton Terminal, Locomotive Engineer Blair was provided with yarding instructions which included the doubling over of a designated cut of cars in the Edmonton Intermodal Terminal Yard.

The Union contends that the grievor is entitled to payment of 12.5 miles pursuant to article 12 and Addendum 40 of agreement 1.2. The Company has not responded to the Union's grievance which was submitted at Step III of the grievance procedure on November 16, 2007. A number of related grievances and further claims submitted under the "interpretive process" have been held in abeyance pending resolution of this dispute.

FOR THE UNION:

(SGD.) B. WILLOWS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
B. Laidlaw	– Manager, Labour Relations, Winnipeg
D. Crossan	– Manager, Labour Relations, Edmonton
P. Payne	– Manager, Labour Relations, Edmonton
M. Healey	– Assistant Superintendent, Edmonton
I. Panesar	– Audit Officer, Edmonton

And on behalf of the Union:

T. Markewich	– Senior Vice-General Chairman, Jasper
B. Willows	– General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not contested. On July 5, 2006, Locomotive Engineer Blair operated train A44351-05 from Mirror, Alberta to Edmonton. On arrival at Edmonton the grievor was required to set off a cut of cars in Walker Yard, which is part of the Edmonton Terminal, and to proceed thereafter some two miles to the Intermodal Yard with the remainder of his consist. At the Intermodal Yard Locomotive Engineer Blair was required to yard the remainder of the train in one track save that he was given a specific car cut to set over from the main body of his train into another track. It is not disputed that that was done in order to facilitate Company operations.

The grievor was paid a 12-1/2 mile payment (PF) for setting off thirty-one cars into the track in Walker Yard. He also submitted a 12-1/2 mile designated cut (DC) payment for the doubling over of the designated cut of seventeen cars into the second track in the Intermodal Yard. That claim was denied by the Company, and is the subject of this grievance.

The Union maintains that the Company is in violation of the provisions of article 12 and Addendum 40 of the collective agreement. Those provisions are as follows:

12.1 Where yard engines are on duty, locomotive engineers in freight service will be considered released from duty upon arrival at the final terminal of the trip for which called after they have yarded their train in a minimum number of tracks, including putting their caboose away and engines to the shop or other designated track. If necessary, such locomotive engineer will spot perishable or stock traffic for servicing or unloading and set off cars or bad order cars for future handling.

Addendum 40

During national negotiations which culminated in the signing of the memorandum of settlement concerning agreement 1.2 on November 20, 1992 it was agreed that we would provide you with a letter clarifying the intent of the agreement insofar as work required by employees upon arrival at the final terminal of their trip where yard engines are on duty.

During our discussion on the matter you confirmed that the Brotherhood was not seeking to change the accepted practice whereby the appropriate Company officer in charge of the operation of a terminal would designate the track on which a train is to be yarded. Your concern was that in some operations Company officers were instructing employees to marshal cars on arrival at terminals where yard engines are on duty.

The Company informed you that if a locomotive engineer is instructed to yard his train in a particular yard track and such track will not hold the entire train, it would therefore be necessary to double-over the surplus cars to another track. In making the double-over it was not the intent of the rule that a locomotive engineer marshal the double-over by setting over for example 10 cars for one destination in one track and 10 cars for another destination in another track. It is the intent of the rule to provide that the surplus cars would be doubled over, if possible, to one other track. However, if due to yard congestion there is insufficient room to double-over all cars to one track it may be necessary to double over to more than one track in order to put the train away.

In order to meet operational requirements, employees in road service may be instructed to double over a designated cut of cars on their train to other tracks. Where locomotive engineers are required to perform a double over to effectively yard their train, they may be required to double over a designated cut of cars. Locomotive engineers who are required to double over designated cuts of cars, (including those working in a conductor only operation) will be paid 12-1/2 miles in addition to all other earnings for the tour of duty. Such mileage will not be included in computing a locomotive engineer's total mileage in the working month.

Except as provided in the foregoing paragraph, employees will not be required to marshal trains upon arrival at terminal (e.g., setting over 10 cars for one destination to one track, and 10 cars for another destination to another track).

We believe that generally speaking line officers are arranging work on arrival at terminals where yard engines are on duty along the foregoing lines. However, we hope that the above clarification will clear up any misunderstanding in this regard.

[emphasis added]

The parties are not disagreed that if a train crew is required to make a designated cut in the process of putting its train away at a terminal where yard engines are on duty the 12-1/2 mile DC payment claimed by the grievor in the case at hand would be payable. The position of the Company is that yard engines were not on duty at the Edmonton Intermodal Yard.

Counsel for the Union maintains that both article 12.1 and Addendum 40 address the circumstance of terminals where yard engines are on duty. He stresses that while the Edmonton Intermodal Yard is part of the Edmonton Terminal, it is not itself a terminal in the sense intended by the collective agreement. On that basis, according to the Union, the 12-1/2 mile payment contemplated within Addendum 40 was payable to Locomotive Engineer Blair on the occasion of his claim on July 5, 2006. The Union stresses that the paragraph of Addendum 40 which speaks to meeting operational requirements and the doubling over of designated cuts of cars in a final terminal where yard engines are on duty was inserted into the Addendum in 1993 and has been interpreted continuously in accordance with the Union's position through the renewal of several collective agreements, until the Company adopted its new interpretation as expressed in Pay System General Notice no. PS-1109W on June 22, 2006. That notice states, in part, "As there are no Yard Engines on duty at MIT (Intermodal Terminal) no designated cuts may be claimed at that location."

The Arbitrator has substantial difficulty with the position taken by the Company. The words "yard" and "terminal" have clear and distinct meanings within the parties' collective agreement. Article 60 of the collective agreement gives specific definition to terminals and lists the terminals as they appear on the various seniority districts. Edmonton is specifically designated as a terminal under article 60.3 of the collective agreement. Its limits are further elaborated under the provisions of article 60.11. It is not disputed that the Edmonton terminal has a number of yard engine assignments, virtually on a 24 hours basis. The Arbitrator cannot, therefore, escape the conclusion that for the purposes of their collective agreement the parties have defined the Edmonton terminal as a terminal where yard engines are on duty.

While in colloquial parlance the Intermodal facility at Edmonton might occasionally be referred to as the Intermodal "Terminal" that does not of itself elevate that yard to the status of a terminal for the purposes of the collective agreement. It is of course open to the parties to so designate the Intermodal facility. However, to date they have not done so.

There is an obvious purposive aspect to the Company's interpretation and position, to the extent that on most days the circumstances on the ground in the Intermodal Yard at Edmonton would be no different from those which would obtain at a terminal elsewhere where yard engines are not on duty. However, I am compelled to take the collective agreement as I find it. It can only be assumed that the parties understood that a number of terminals might contain multiple yards, a factor which must be presumed to be taken into account when they fashioned the provisions of article 12 and Addendum 40 of their collective agreement. That, indeed, would appear to be supported by the consistent past practice of the Company pleaded by the Union in the case at hand.

On the day in question, the Intermodal Yard at Edmonton was situated within a terminal where yard engines were on duty. Locomotive Engineer Blair was instructed to do more than simply yard his train, being specifically directed to execute a precise cut and placement of cars "... in order to meet operational requirements" as contemplated within the language of Addendum 40. In that circumstance the payment claimed by Locomotive Engineer Blair is payable.

The grievance is therefore allowed. The Arbitrator directs that the claim of Locomotive Engineer Blair be paid forthwith, and that the Company cease in the application of the pay systems general notice of June 22, 2006. The Arbitrator further directs that all employees in circumstances similar to those of Locomotive Engineer Blair be paid in accordance with the provisions of article 12.1 and Addendum 40.

June 18, 2007

(signed) MICHEL G. PICHER
ARBITRATOR