

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

CASE NO. 3621

Heard in Edmonton, 13 June 2007

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

and

**TEAMSTERS CANADA RAIL CONFERENCE
(INTERVENOR)**

DISPUTE:

The improper utilization of Jasper crews between Jasper, Alberta and McBride, British Columbia, and Jasper and Blue River, British Columbia.

JOINT STATEMENT OF ISSUE:

The terminal of Jasper, Alberta, maintains conductor pools which are assigned to specific subdivisions in accordance with the collective agreement. One of these pools operates between Jasper, Alberta and McBride, British Columbia while another operates between Jasper and Blue River, British Columbia.

Article 43 of agreement 4.3 provides mandatory language requiring that conductors will be regularly assigned to specific subdivisions and will be kept on those subdivisions, except in case of emergency. Article 106 of agreement 4.3 provides that conductors will be advised at the time of their call as to the class of service for which called and the final destination of their tour of duty, which can only be changed as the result of an emergency. Despite these collective agreement provisions, the Company has required conductors to operate off their assigned territories and changed their final destination when no emergent circumstance was present.

It is the Union's position that the Company, by requiring conductors to work in this manner, has violated the terms of the collective agreement. The Union requests that the Company cease and desist calling crews in this manner.

The Company denies it has violated the agreement.

FOR THE UNION:

(SGD.) B. BOECHIER
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

D. Crossnan	– Manager, Labour Relations, Prince George
G. Karpó	– Trainmaster, Jasper
K. Morris	– Manager, Labour Relations, Edmonton
B. Laidlaw	– Manager, Labour Relations, Winnipeg

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
R. Barr	– Interim General Chairperson, Edmonton

R. Thompson – Local Chairman, Jasper
T. Carroll – Local Chairman, Jasper
D. Tank – Vice-Local Chairman, Jasper
B. Boechler – Witness
R. Hackl – Witness

And on behalf of the Intervenor TCRC:

B. Willows – General Chairman, Edmonton
R. Ermet – Vice-General Chairman, Edmonton

On Tuesday, 10 July 2007, there appeared on behalf of the Company:

D. Crossnan – Manager, Labour Relations, Prince George
G. Karpo – Trainmaster, Jasper
K. Morris – Manager, Labour Relations, Edmonton
R. Smith – Assistant Superintendent, Winnipeg
J. Kane – Audit Officer, CMC, Edmonton

And on behalf of the Union:

M. A. Church – Counsel, Toronto
R. Hackl – Witness
M. Rutzki – Secretary, Melville
R. Thompson – Local Chairman, Jasper

And on behalf of the Intervenor TCRC:

B. Willows – General Chairman, Edmonton
R. Ermet – Vice-General Chairman, Edmonton
T. Markewich – Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

At the initial hearing of this grievance, in June of 2007, the Company objected to the Union including argument with respect to article 64 of the collective agreement in its submission to the Arbitrator. In response, counsel for the Union noted that the Company had raised article 64 as part of its reply to the Union. In the circumstances, and in interest of a full and fair hearing, the Arbitrator allowed the Union to amend its *ex parte* statement of issue so as to be deemed to include an alleged violation of article 64 of the collective agreement. However, in fairness to the Company, the hearing was adjourned to be continued in July of 2007, at which point the Company would be given the opportunity to submit its brief, including full response to the issue of article 64.

In the result, the Union alleges violations of articles 43, 106 and 64 of the collective agreement. The dispute arises by reason of the Company's newly adopted practice, initiated on September 20, 2005 for a brief period, and then revived on March 15, 2006. Traditionally employees at Jasper operating west of that terminal did so out of two pools. One pool handled traffic from Jasper to McBride, operating over the Albreda Subdivision, the Robson Subdivision and finally the Tête Jaune Subdivision to McBride. A second pool handled traffic from Jasper to Blue River via the Albreda and Robson Subdivisions. Following the purchase of BC Rail the Company decided to run former BC Rail trains towards Vancouver via McBride and Kamloops, apparently to take advantage of more favourable grade on its own tracks. That resulted in a Jasper-McBride crew operating a train from McBride to Peterson, on the Robson Subdivision where it would be taken over by a Jasper-Blue River crew who would handle it to Blue River over the Albreda Subdivision. In that circumstance the Jasper-Blue River crew would be deadheaded to Peterson from Jasper to handle the train while the Jasper-McBride crew would deadhead by taxi from Peterson back to Jasper.

To avoid inefficiencies, and the substantial costs attached to deadheading crews between Jasper and Peterson, the Company instituted a practice whereby crews in unassigned service operating from Jasper to Blue River would then be assigned to handle trains from Blue River to McBride. The same crew would then be required to operate a train from McBride back to Jasper. Conversely, Jasper-McBride crews would be assigned to operate trains from McBride through Peterson and over the Albreda Subdivision to Blue River, from which they would be required to work back to Jasper over the Albreda Subdivision.

As noted above, the Union maintains that the foregoing practice violates articles 43, 106 and 64 of the collective agreement. Those provisions read, in part, as follows:

43.3 Train service employees in chain gang crews in unassigned service will be assigned to regular subdivisions, and will be kept on those subdivisions, except in emergency on account of shortage of crews they may be required to go on another subdivision, in which case they must be changed off with the first unassigned train service employees on that subdivision met en route.

106.5 Train service employees will be notified when called as to the class of service for which ordered and the final destination for the tour of duty. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, engine failure, washout, snow blockade or such other like emergency.

Tours of Duty at Away-From-Home Terminal

64.1 An employee will not be held at the away-from-home terminal to make more than one round trip out of, or tour of duty at the away-from-home terminal.

64.2 In the event of an employee standing first-out after having worked the turnaround trip or tour of duty, away from the home terminal and another trip or tour of duty is to be made, the employee may elect as to whether or not they may make such trip or tour of duty, or require the employee standing behind them to do so, but when exercising this right paragraphs 43.1 to 43.3 inclusive of article 43 will not apply.

Simply stated, the Union maintains that the Company's practice requires employees to operate over subdivisions other than their own subdivision, in a manner contrary to article 43. It also submits that employees are not properly notified upon leaving Jasper as to the final destination for their tour of duty, to the extent that they might be assigned from Blue River back to Jasper or possibly from Blue River to McBride. The Union also stresses that the assignments so structured have been particularly onerous for employees, noting that on some occasions employees may be gone from their home terminal of Jasper for as long sixty hours. Finally, the Union maintains that the intention of article 64 is that employees cannot be made to work from one away-from-home terminal to another away-from-home terminal. Its interpretation of article 64.1 is that crews held at an away-from-home terminal can only be assigned to perform one round trip out of that terminal or, alternatively, be assigned to perform a tour of duty at that terminal, and not to another away-from-home terminal.

It appears that the Company eventually conceded that operating two separate pools out of Jasper in the manner described above did constitute a violation of article 43 of the collective agreement, as employees in both pools were necessarily compelled to operate off their own subdivisions. To that end, effective January 19, 2007, the Company abolished the two separate pools out of Jasper, placing all unassigned employees operating west of Jasper into a single pool which could be called in service to either Blue River or McBride. In other words, with that adjustment, the Company maintains that it has corrected any possible violation of article 43, as all crews home terminalled at Jasper in service west of that point can properly be assigned to either of the two away-from-home terminals of Blue River and McBride. It appears, however, that the Union has separately grieved the Company's establishing of the single pool, a dispute which is presently pending.

Upon a review of the material the Arbitrator is inclined to agree with the Company's position with respect to the issue of article 106.5. To the extent that employees held at Blue River are called to operate to McBride in through freight service, it would appear that they are properly advised of the final destination and class of service for the tour of duty. The Arbitrator has difficulty seeing how the Company's initiative can be said to have violated that provision.

As regards the issue of article 43, given the disposition of this grievance on the basis elaborated below, the Arbitrator deems it appropriate to make no comment about that article, as its operation is the subject of a separate grievance presently in the grievance procedure. While at first blush it would appear to be a Company prerogative to restructure pools in a manner which best suits the efficiency of its operations, that matter need not be decided to dispose of the grievance at hand.

It the Arbitrator's view the instant grievance is most properly dealt with as relates to the application of article 64 of the collective agreement. In that regard it is worth again reproducing article 64.1 which reads as follows:

64.1 An employee will not be held at the away-from-home terminal to make more than one round trip out of, or tour of duty at the away-from-home terminal.

The Arbitrator has difficulty understanding how the language of article 64.1 can be interpreted so as to support the position taken by the Company. The language of the article clearly contemplates a single away-from-home terminal for the purposes of a given assignment. In that regard it is useful to reflect upon the provisions of article 43B.1 of the collective agreement governing through freight service at the away-from-home terminal. That article reads as follows:

43B.1 Notwithstanding their assignment out of the home terminal, conductors and assistant conductors will cycle independently out of the away from home terminal on a first-in, first-out basis in their respective classifications except that:

(a) When an assistant conductor is required and there are no assistant conductors available at the away-from-home terminal conductors will be called to work as assistant conductors **back to the home terminal**. Employees so used will be paid therefore at the conductor rate.

...

(b) Qualified assistant conductors may be called, on a first-in first-out basis, **to work as conductor back to the home terminal** to meet the requirements of the service when there are no conductors available at the away-from-home terminal and will be paid therefore at the conductors' rate including, where applicable, the allowance set out in the NOTE following paragraph 13.3.

[emphasis added]

The scheme and language of article 43B.1 is, in my view, entirely consistent with the concept of an employee working from his or her home terminal to a single away-from-home terminal and thereafter being assigned in duty "back to the home terminal" as indicated on the face of the article.

The language of article 64.1 is also significant. It is noteworthy, in the Arbitrator's view, that the parties have chosen to speak of "**the** away-from-home terminal" rather than "**an** away-from-home terminal" or "away-from-home **terminals**" expressed in the plural. Under the language of article 64.1 an employee at his or her away-from-home terminal may only be held for two purposes: either making not more than one round trip out of that away-from-home terminal or, alternatively, performing a tour of duty at the away-from-home terminal. The latter option would appear to arise, for example, when an employee is called upon to do rescue work from the away-from-home terminal or possibly perform yard service at that location. The Arbitrator cannot agree with the Company's interpretation which would expand the meaning of "tour of duty at the away-from-home terminal" to include through freight service to yet another away-from-home terminal.

Nor is the Arbitrator persuaded by the past practice which the Company seeks to call in support of its interpretation. The three examples which the Company's representatives cite to the Arbitrator are distinguishable. They represent either grain block work which, in at least two situations, has been accepted by the Union as permissible for Winnipeg based crews in grain block service and, in the case of a Saskatoon based crew, a situation which appear to have been deemed permissible by reason of ticket splitting. The limited exceptions alluded to by the Company do not, in my view, represent a sufficiently preponderant practice so as to change the proper interpretation of a provision as important as article 64 of the collective agreement.

In the Arbitrator's view the language of article 64 plainly contemplates a single away-from-home terminal and delineates the rights and obligations of employees with respect to being held at the away-from-home terminal. There is no suggestion in the language of the provision that employees assigned away from their home terminal can be held at more than one away-from-home terminal during the course of their assignment, prior to returning to the home terminal. On the contrary, the parties appear to have adopted language which recognizes that there can be only a single away-from-home terminal for any given assignment, and a limited right to hold an employee at that location, whether for a single round trip out of it or a tour of duty at the away-from-home terminal itself. There is simply no contractual basis within the collective agreement for the Company to assign employees from one away-from-home terminal in through freight service to another away-from-home terminal, as has been done in the case at hand.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company has violated article 64 of the collective agreement by its newly adopted practice with respect to the assignment of work in the Jasper triangle. The Company is therefore directed to cease and desist forthwith from that practice. While the Arbitrator is not unaware of the inefficiencies which the Company sought to solve by the practice it introduced, it

remains bound by the limitations of article 64 of the collective agreement and must negotiate any relief in that regard with the Union.

July 16, 2007

(signed) MICHEL G. PICHER
ARBITRATOR