

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3919**

Heard in Montreal, Tuesday, 13 July 2010

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Requiring Biggar crews to perform work in Saskatoon Industrial zones contrary to articles 102 and 43.3 as well as work in excess of that permitted in the Conductor-Only Agreement as this was not work "enroute" as described by the agreement.

UNION'S STATEMENT OF ISSUE:

On April 5, 2008, train 802 was ordered from Biggar to Watrous. Conductor Derek Marchuk, a Biggar based conductor, was assigned to the train. Upon arrival in Saskatoon, which is a station on the Watrous Subdivision between Biggar and Watrous, Conductor Marchuk was required to proceed to the Agpro Grain Elevator, which is on the Warman Subdivision, and spot this elevator. Conductor Marchuk was assisted by Trainmaster Len Roy. After completion of this work the crew returned to Saskatoon yard, via the Warman Subdivision, and then continued east towards Watrous.

The Union submits that this work is located within Saskatoon switching limits in a defined industrial zone and, as such, should have been performed by Saskatoon based yard employees. The Union further submits that requiring a Biggar crew to go off their assigned territory is a violation of article 43.3 of agreement 4.3 and that it does not meet the requirements of Conductor Only operation. In all of the circumstances, the Union submits that this is a blatant and indefensible violation of the collective agreement mandating that an appropriate remedy be applied in accordance with the collective agreement.

The Company has not responded to this grievance.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Brodie	– Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
D. Crossan	– Manager, Labour Relations, Prince George

G. Wolnairski – Assistant Superintendent, Transportation, Winnipeg

And on behalf of the Union:

D. Ellickson – Counsel, Toronto
B. R. Boechler – General Chairman, Edmonton
R. A. Hackl – Vice-General Chairman, Edmonton
M. Rutzki – GST/LC, Melville
J. Dwyer – Local Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The record discloses that the grievor operated train 802 from Biggar with 100 grain empties on April 5, 2008. Having passed the outer terminal switch of the Saskatoon Yard his movement proceeded approximately three miles through the terminal and entered the Warman Subdivision before arriving at a main line switch allowing access into the Agpro Grain facility. It does not appear disputed that Conductor Marchuk was ordered from Biggar to Watrous in combination service and that he would travel by taxi from Saskatoon to Watrous. It appears that upon his arrival in Saskatoon he was given new TGBOs allowing his entry onto the Warman Subdivision for the purpose of proceeding to the Agpro facility where he was to spot the empty grain cars on his train.

It would seem that the grievor expressed to Trainmaster Len Roy that he did not believe that the work was being properly assigned to him. Because the Agpro facility is located within the switching limits of Saskatoon Yard, he believed that the spotting of the grain empties should be viewed as industrial work which properly belongs to yard crews. He then followed his trainmaster's instruction to perform the work and to file a grievance if he felt the assignment to be improper.

The Union relies on the provisions of article 102.1 of the collective agreement which provides 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.

From the standpoint of the Union, as argued by its counsel, the issue is relatively straightforward. The Union characterizes the spotting of the Agpro Grain facility, which involved placing approximately sixteen cars each in some four receiving tracks, with the balance being placed on a storage track, as constituting “industrial work in connection with terminal” within the meaning of article 102.1 of the collective agreement. On that basis it maintains that the work properly belonged to Saskatoon Yard crews.

The Company takes a different view. Its representatives stress that the collective agreement contemplates, under the provisions governing Conductor Only operations, that crews may be called upon to either take on or set out cars enroute. That, it submits, is what occurred at the Agpro facility on the Warman Subdivision with respect to the grievor’s movement on April 5, 2008. The Company relies, in part, on the decision of the arbitrator in **AH 560** where it was determined that in Conductor Only operations cars can be taken on or set out at enroute locations, including locations which may involve the spotting of cars in a number of tracks. In that regard the following comments were made:

Fourthly, with respect to service enroute, the Arbitrator is satisfied that the phrase “stops enroute” found in article 15.2 (b) (v) is intended to reference a stop at a location enroute, and not to the number of tracks which a crew may be required to enter at a particular stop location. In other words, should a crew be required to stop at a grain elevator to lift or set off cars in three tracks, such an operation must be considered a single stop for the purposes of the conductor only agreement. ...

The issue in the instant case is relatively straightforward. Can the work which was performed be best characterized as industrial work in connection with the Saskatoon terminal, as the Union would have it, or is it better viewed as switching work enroute, which is contemplated as permissible under article 15.2(b)(v) and (vi) of the collective agreement. Those provisions read as follows:

En Route

- (v)** Such trains will make no more than three stops en route for the purpose of taking on and/or setting out a car or group of cars together, except to set off a bad order car or cars. The setting off of a bad order car or cars is not a stop for the purposes of this sub-paragraph;
- (vi)** Such trains will not be required to perform switching en route (i.e., between the initial and final terminal) except as may be required in connection with the taking on or setting out of cars as, for example, to comply with the requirements of rules and special instructions governing the marshalling of trains;

In the Arbitrator's view the Company's position is more compelling. If the grievor's train had been ordered from Biggar to Saskatoon, within yarding instructions to spot its cars at the Agpro facility, which is within the Saskatoon Yard, to the extent that the switching would have been in relation to the grievor's own train and the cars would have been set out in a minimum of tracks at that facility, there would then appear to be no violence to the Conductor Only principles. Similarly, if the Agpro facility were located outside the switching limits of the Saskatoon Yard, there could be no question but that

the work in question would be appropriate under the Conductor Only rules. The instant dispute arises only because the Saskatoon Yard and the Agpro facility within it are themselves enroute locations for the grievor's assignment, which spanned Biggar to Watrous.

The Arbitrator finds it difficult to conclude that the parties intended, or would have intended, that the enroute provisions of the collective agreement governing Conductor Only operations would have no application in an enroute location which also happens to be a discrete terminal or yard with its own switching limits. In my view the collective agreement provisions must be read as a rational whole. While it is true that it is not likely that many Conductor Only trains will operate through the switching limits of a terminal as an enroute location, it is difficult to avoid the conclusion that in the facts at hand the Saskatoon Yard and the Agpro facility within it were enroute locations for the purposes of the grievor's assignment. To the extent that that is so, in my view, the work of delivering the empty grain cars to the grain elevator facility is more compellingly to be characterized as work performed enroute, in keeping with article 15.2 of the collective agreement, rather than, "work in connection with [the Saskatoon] terminal" in the sense contemplated by article 102.1 of the collective agreement.

Significantly, the parties have provided no language within the provisions of the collective agreement which govern Conductor Only operations to suggest that a terminal or a yard where yard engines are employed cannot be considered an enroute location. The unchallenged representation of the Company's representatives before the

Arbitrator is that it is not uncommon for assignments to be structured so that trains do in fact move through a yard such as Saskatoon Yard while in the course of their assignment which begins or ends at other terminals.

The narrow question in the case at hand is whether the work in question can fairly be said to have been work to be performed by the grievor and his crew enroute. I am compelled to conclude that as they were then enroute from Biggar to Watrous, that designation does properly apply and that the assignment made to the grievor was permissible within the provisions of article 15.2(b)(v) and (vi) of the collective agreement.

The grievance must therefore be dismissed.

July 19, 2010

(signed) MICHEL G. PICHER
ARBITRATOR