

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4062**

Heard in Montreal Tuesday, 13 December 2011

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Claim on behalf of Locomotive Engineer D.D. Ulmer for lost earnings on Train L42141 17 on December 17, 2011 when Mr. Ulmer was called to work to protect a Traffic Coordinator vacancy under agreement 4.2. The forcing of locomotive engineers to protect vacancies as Yard Traffic Coordinators (YTC).

**COMPANY'S STATEMENT OF ISSUE:**

On December 17, 2010, Mr. Ulmer was called to work to protect his Traffic Coordinator seniority and fill a 23:00 hours Traffic Coordinator vacancy in accordance with the provisions of agreement 4.2. The Union progressed Mr. Ulmer's claim for lost earnings as a locomotive engineer on Train L42141 17.

The Union contends that the Company does not have the ability to force employees working as locomotive engineers under agreement 1.2 to protect Traffic Coordinator vacancies.

The Company contends that the Union has not progressed a proper grievance in accordance with agreement 1.2, since it failed to identify an article or paragraph allegedly violated by the Company's assignment of Mr. Ulmer to the Traffic Coordinator vacancy and that the grievance is inarbitrable and must fail on that basis. The Company also disagrees with the Union's contentions on the merits of the grievance on behalf of Mr. Ulmer.

**UNION'S STATEMENT OF ISSUE:**

On December 17, 2010, the Company forced Locomotive Engineer D. Ulmer to protect a 23:00 YTC vacancy despite being assigned to the locomotive engineers' spareboard and working under the conditions of agreement 1.2.

It is the Union's position that the Company does not have the ability to force employees working as locomotive engineers under agreement 1.2 to protect Yard Traffic Coordinator vacancies.

The Company disagrees with the Union.

**FOR THE UNION:**  
**(SGD.) T. MARKEWICH**  
**FOR: GENERAL CHAIRMAN**

**FOR THE COMPANY:**  
**(SGD.) D. BRODIE**  
**FOR: VICE-PRESIDENT, HUMAN RESOURCES**

There appeared on behalf of the Company:

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

There appeared on behalf of the Union:

D. Ellickson – Counsel, Toronto  
T. Markewich – Vice-General Chairman, Edmonton  
B. Willows – General Chairman, Edmonton  
W. G. Scarrow – Witness

### **AWARD OF THE ARBITRATOR**

The Company makes a preliminary objection. It submits that the Union has cited no provision of the collective agreement which has been violated, contrary to the requirements of the collective agreement and the rules of this Office.

It is common ground that the grievor holds seniority both as a traffic coordinator (formerly Yardmaster) as well as a locomotive engineer. At all times material to this grievance he held permanent work as a locomotive engineer. As indicated in the statement of issue, on December 17, 2010 the Company compelled him to work as a traffic coordinator. It does not appear disputed that in complying with that request, as he did, he lost greater potential earnings by not operating as a locomotive engineer on the same day, in the amount of approximately \$300.

The issue is whether the Company has any authority to force the grievor from his position as a locomotive engineer to work as traffic coordinator.

In the Arbitrator's view it is not surprising that the Union has made reference to no provision of the collective agreement. Indeed, it would appear that the collective agreement is silent with respect to this issue. That is not surprising, as historically the collective agreement governing locomotive engineers, formerly represented by the Brotherhood of Locomotive Engineers, has always been an entirely different collective agreement from that which governed the employment of conductors, trainmen and traffic coordinators or yardmasters, employees previously represented by the United Transportation Union. There appears to be no dispute that historically employees falling under the General Committee of Adjustment relating to conductors and trainpersons governed by collective agreement 4.16 and yardmasters governed by collective agreement 4.2 have been recognized as being under an obligation whereby conductors and trainmen who hold traffic coordinator seniority can be forced to protect work as a traffic coordinator. There does not, however, appear to be any corresponding history with respect to forcing locomotive engineers to protect such work.

It is therefore not surprising that the Union can point to no article of the collective agreement as being violated. Very simply, the locomotive engineers' collective agreement does not contemplate locomotive engineers, including such engineers as may have past seniority as traffic coordinators, being forced to protect traffic coordinator assignments. More importantly, the collective agreement must be taken as exhaustively

identifying the work and work assignments, and corresponding wages, of employees who work under it, absent clear and unequivocal language to the contrary. The Union must be taken as alleging a violation of the implied term which underlies the collective agreement, namely that it is the only document governing the terms and conditions of employment for locomotive engineers, and does not contemplate them being compelled to work under another collective agreement.

The collective agreement which governs locomotive engineers does recognize that locomotive engineers may hold and accrue seniority as a traffic coordinator. Article 56.14 reads, in part, as follows:

**56.14**

- (a) Employees working as either a Traffic Coordinator or Locomotive Engineer shall continue to retain and accumulate seniority under Agreement 4.2 and 1.2 regardless of which classification in which they are employed.
- (b) During the period he/she is employed on a yardmaster's position, he/she shall not be considered as having entitlement to work under this agreement.
- (c) Employees exercising their seniority under this agreement shall do so in accordance with the appropriate provisions dealing with the exercise of seniority.

The Company relies, in part, on the provisions of article 4.12 of collective agreement 4.2, the collective agreement negotiated by another General Committee of Adjustment which governs traffic coordinators. That article reads as follows:

- 4.12** Traffic Coordinators must protect, all relief work and extra service as Traffic Coordinator or Assistant Traffic Coordinator in the yard in which employed. Vacancies of five (5) days or less, will be filled temporarily, on a day to day basis in the following sequence:

- (1) The employee first up, at straight time, on the Traffic Coordinators Spareboard where established, if none; (See Addendums 10, 10A, 10B and 10C.)
- (2) The employee first up, at punitive rates, on the Traffic Coordinators Spareboard where established, if none; (See Addendums 10, 10A, 10B and 10C)
- (3) The senior qualified unassigned Traffic Coordinator available at straight time rates in yard service, which includes a Yard/ Joint Spareboard, if none;
- (4) The senior regularly assigned Traffic Coordinator available at punitive rates, if none;
- (5) The senior unassigned Traffic Coordinator governed by Agreement 4.3 or 4.16 assigned to yard service, which includes a Yard/ Joint Spareboard, as the case may be, at punitive rates, if none;
- (6) The senior employee qualified as a Traffic Coordinator governed by other Collective Agreements, if none;
- (7) The senior employee qualified as a Traffic Coordinator occupying a position on a road service spareboard, if none;
- (8) The senior employee qualified as a Traffic Coordinator, working in road service, when it can be determined that the Traffic Coordinator position filled will not interfere with the employee's normal assignment.

Note: In the event there is more than one vacancy to fill with the same starting time, the senior qualified employee will be given their choice of assignment.

In the Company's submission, a locomotive engineer qualified as a traffic coordinator would fall under sub-paragraph (6) of the foregoing provision and would be liable to be called to work as a traffic coordinator. Counsel for the Union responds to that submission, stating that the locomotive engineers cannot, by any principle of contract law or collective bargaining, be bound to an undertaking made by a separate union, or in this case a separate General Committee of Adjustment, under the terms of an entirely separate collective agreement.

In my view the Company's reliance on article 56.14 is substantially called into question by the history of that article. It appears that it first came into the collective agreement governing locomotive engineers in 1986. At that time the following explanatory note was published:

**Employed on Yardmaster's Position**

A new paragraph, 56.14, has been added to Article 56 to allow employees, who hold seniority under both Agreement 1.2 and Agreement 4.2, to work, **if they so desire**, as a regularly assigned Yardmaster for up to one year, without loss of seniority under Agreement 1.2, even though able to hold work as a locomotive engineer. At the expiration of the year, or at the first time thereafter that he can hold work as a locomotive engineer, the employee will then make his election either to work as a locomotive engineer or remain working as a yardmaster. Election of one will result in the forfeiture of seniority as the other.

As set out in sub-paragraph 56.14(b), during the year in which an employee elects to work as a yardmaster, he is not entitled to work as a locomotive engineer.

(emphasis added)

Relying on the above reflected history, counsel for the Union submits that what was intended by article 56.14 was to permit a locomotive engineer to continue to accrue seniority as a yardmaster or traffic coordinator so that the individual in question could exercise that seniority in the event of being able to no longer hold work as a locomotive engineer. It was not, he submits, intended as a device whereby locomotive engineers could be compelled to protect yardmasters' work, as was commonly done within the group of employees formerly represented by the United Transportation Union, conductors, trainmen and yardmasters (CTY). It is on that basis that he suggests that it was entirely legitimate for the UTU to negotiate the provisions of article 4.12 of collective agreement 4.2, the terms of which plainly contemplate senior employees qualified as traffic coordinators who are governed by other UTU CTY collective

agreements being subject to being compelled to protect traffic coordinator's work for vacancies of five days or less.

The Arbitrator finds the argument of the Union to be compelling. If the position of the Company is to be accepted, it would be necessary to conclude that the UTU and the Company effectively negotiated a provision which limited the seniority and work opportunities of locomotive engineers who were then represented solely by the Brotherhood of Locomotive Engineers. I know of no principle in Canadian collective bargaining law which could allow such an outcome. If the parties had intended by the language of article 56.14 of the locomotive engineers' collective agreement to make locomotive engineers who hold seniority under collective agreement 4.12 liable to be forced to protect work under that agreement, they would have had to say so in clear and unequivocal terms. No such terms are to be found in the language of article 56.14 of collective agreement 1.2, or elsewhere within that document.

In considering this dispute it is important to be guided by basic principles. Locomotive engineers have traditionally been regulated, and continue to be regulated, for the purposes of their terms and conditions of employment, under a collective agreement which is entirely separate from the collective agreement negotiated by a different General Committee of Adjustment for conductors, trainpersons and yardmasters. While it would be open to the General Committee of Adjustment which now represents locomotive engineers to agree to a collective agreement provision that would allow engineers holding traffic coordinators' seniority to be compelled to protect

such work under the provisions of collective agreement 4.12, in the absence of any clear provision within the locomotive engineers' collective agreement to allow such an outcome, I can see no basis upon which the position of the Company can be sustained. To put the matter differently, I am aware of no principle whereby the locomotive engineers can be bound by the provision of another collective agreement, negotiated separately by another trade union under the administration of an entirely separate General Committee of Adjustment.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs that the claim of Locomotive Engineer D. Ulmer be paid forthwith. I further find and declare that the Company violated the collective agreement and that it is without authority to force a locomotive engineer to protect a position as yardmaster or traffic coordinator. For the purposes of clarity, it should be added that nothing in this award should be taken as preventing a locomotive engineer from voluntarily accepting to cover off a temporary vacancy in a traffic coordinator's position when requested to do so.

December 19, 2011

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