

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 4113**

Heard in Edmonton, Thursday, 13 June 2012

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**EX PARTE**

**DISPUTE**

The use of employees working in Road Switcher service to perform yard work.

**UNION'S STATEMENT OF ISSUE:**

On September 16, 2010, the grievors, Jason Horst and Prince Stewart were working their regular assignment, the 582 Road Switcher.

The grievors were given a switch list and instructed to switch out and assemble another train, Train 520. The grievors advised the Company officer that this properly was work that belonged to yard crews and was contrary to the collective agreement. The grievors were instructed to perform the work, which they did.

The Union submits that Road Switcher crews can only be required to switch in connection with the assembling or yarding of their own trains. As such, the Company's actions are contrary to articles 62.1 and 102 of agreement 4.3. Additionally, the Company has acted contrary to the arbitrator's award in CROA 3502.

The Union submits that, as this was properly yard work, that the employees adversely affected be compensated a 100 mile runaround and that a suitable remedy, in accordance with the intent of the collective agreement, be implemented.

The Company has not responded to this grievance.

**FOR THE UNION**

**(SGD) B. R. BOECHLER**

**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

- D. Brodie – Manager, Labour Relations, Edmonton
- K. Morris – Sr. Manager, Labour Relations, Edmonton
- D. VanCauwenbergh – Director, Labour Relations, Toronto
- P. Payne – Manager, Labour Relations,, Edmonton
- J. Boychuk – General Manager, Edmonton
- B. Butterwick – Superintendent Transportation, Saskatoon

There appeared on behalf of the Union:

- M. Church – Counsel, Toronto
- B. R. Boechler – General Chairman, Edmonton
- D. Finnson – Vice-President, TCRC, Calgary
- R. A. Hackl – Vice-General Chairman, Edmonton
- R. Thompson – Vice-General Chairman, Edmonton
- M. Rutzki – General Secretary/Treasurer, Melville
- J. Dwyer – Local Chairman, Saskatoon
- M. Johnson – Local Chairman, Edmonton
- B. Willows – General Chairman, TCRC LE, Edmonton
- D. Able – General Chairman, TCRC LE, CP Lines West, Calgary

### **AWARD OF THE ARBITRATOR**

There are two Road Switcher assignments at Saskatoon. It is not disputed that as a general matter a Road Switcher assignment would be required to do switching within switching limits in connection with its own train, to assemble the consist which it will then take beyond switching limits for delivery to industrial customers who are located outside switching limits and within a thirty mile radius of the terminal. On September 16, 2010, the crew working Road Switcher assignment 582 was assigned, in part, to switch out tracks in Saskatoon Yard to assemble a consist which would be delivered in road switcher assignment by Road Switcher 520 the following day. The Union alleges that the work so assigned violates article 102 of the collective agreement and is contrary to the ruling of this Office in **CROA&DR 3502**.

Case 3502 was not factually analogous to the instant case. In that case the Company abolished the 1500 Yard assignment at Regina and effectively transferred all

of the work performed by that assignment, essentially within the yard and switching limits, to Road Switcher assignment 523. The Union grieved that that transfer of work violated article 102.1 of the collective agreement, the same article it claims was violated in the instant case. The following excerpt from the arbitrator's award in **CROA&DR 3502** is instructive:

In the Arbitrator's view the instant case turns substantially on the application of article 102.1 of the collective agreement. Entitled "Yard Service Employees' Work Defined" it reads as follows:

**Yard Service Employees' Work Defined**

**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 11.2.

The material before the Arbitrator establishes that industrial work within the switching limits of the Regina terminal had for years been performed consistently and traditionally by the 1500 yard assignment. It is not disputed that that assignment was abolished and that all of the work of the assignment was effectively given to the newly established road switcher 523. The assignments accomplished by the road switcher are virtually identical to those performed by yard assignment 1500, involving all of the same industrial customers within switching limits at Regina. It would appear that for a period in excess of two years, from the establishment of the 523 road assignment first posted on November 9, 2002 until the present time the core duties of the road switcher assignment have been essentially identical to those of the abolished yard assignment. While it appears that on a few rare occasions the road switcher has ventured outside the switching limits, on perhaps some four or five occasions, those incidental and extremely rare duties do not change the essential characteristic of the assignment.

The Company argues that the work of yard service employees is essentially defined by the first sentence of article 102.1. The Arbitrator cannot agree. That approach essentially gives no meaning to the second sentence which reads "Switching limits to cover all transfer and industrial work in connection with terminal." As inelegant as the phrasing of that sentence may be, it clearly falls under the definition of "Yard Service Employees' Work Defined" which appears as the title of the entire article. In the Arbitrator's view a fair reading of that sentence must be taken to mean that switching limits are intended to protect for yard service employees all transfer and industrial work in connection with the terminal. That is precisely the work which is the subject of the instant dispute. Indeed, there would appear to be little purpose for establishing

switching limits other than to give a clear definition to that territory which involves yard service, and defining certain limits on road service.

In that same case the Company argued that the language found in the collective agreement governing Western Canada was not as strong as that which obtained in Eastern Canada, under collective agreement 4.16. The arbitrator dismissed that submission in the following terms:

Nor does the Arbitrator see much persuasive value in the Company's suggestion that the provisions of the instant collective agreement are to be distinguished from those of article 41 of collective agreement 4.16, which applies on the Company's Eastern Lines. That provision reads as follows:

**Yardmen's Work Defined**

**41.1** Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yardmen are employed, be considered as service to which yardmen are entitled, but this is not intended to prevent employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

While it is true that the word "switching" which appears in article 41.1 of collective agreement 4.16 is not to be found in the wording of article 102.1 of the instant collective agreement which applies in Western Canada, for the reasons touched upon above, I am satisfied that the parties in Western Canada clearly intended industrial work within switching limits to be protected as work of yard service employees. Moreover, the application of these provisions is substantially similar in both Eastern and Western Canada. Notably, the Company points to a number of locations where road switchers have been assigned to perform switching within yards. In virtually each case advanced, however, there were no yardmen employed in the locations where the practice was initiated. I am satisfied that like article 41.1 in collective agreement 4.16, article 102.1 of the instant collective agreement was plainly fashioned to protect those locations where yard assignments are established.

I must agree with counsel for the Union that if the interpretation of the Company should obtain, the provisions of the collective agreement intended to protect the scope of yard assignments and yard service employees' work would become close to meaningless. Given the wording of article 102.1, how can it be said that the parties would have intended that the Company could fully assign the regular work of a yard assignment to a road crew? To so conclude would, in my opinion, fly in the face of both the letter and the spirit of the collective agreement.

In my view the foregoing award must be read and understood in its context. In **CROA&DR 3502** a road switcher was effectively assigned to perform all of the work, including transfer work and industrial work within the switching limits of the terminal previously performed by the abolished 1500 Yard assignment. That clearly violated article 102.1. In the instant case, however, it cannot fairly be said Road Switcher assignment 582 was assigned to do transfer work or industrial switching inside switching limits. The work which was given to Road Switcher assignment 582 was exclusively in relation to road switcher work. That is so to the extent that all of the cars assembled by assignment 582 were in furtherance of the road switcher assignment to be performed the next day by Road Switcher 520.

However, in the Arbitrator's view the Company's view cannot be accepted in its entirety. As appears from the Company's submission, it relies on article 13.6 of the collective agreement to assert that road switchers can in fact be assigned to service industrial sites within yard limits. In that regard article 13.6 of the collective agreement provides, in part, as follows:

#### **Road Switcher Service**

Train service employees operating on a turnaround basis in Road Switcher Type Service within a radius of 30 miles from the point required to report for duty will be considered as in Road Switcher Service and compensated at a rate per hour of:

...

Train service employees may be run in and out and through their regularly assigned initial terminal without regard for rules defining completion of trips. Time to be computed continuously from the time train service employees are required to report for duty until time released at completion of day's work. Eight hours or less shall constitute a day's work and time in excess of 8 hours will be paid on the minute basis at a rate per hour of 3/16ths of the daily rate.

Article 13 of the collective agreement is dedicated to rates of pay in road service other than passenger service. In that context I find it difficult to interpret article 13.6 as intended to describe the work jurisdiction of road switchers. Rather, it is in my view intended to describe the geographic areas within which road switcher service is intended to function and the related rates of compensation for that service. It should not, in my view, be interpreted as trumping the protections afforded to yard service in article 102.1 of the collective agreement.

However, for the reasons touched upon above, I can see nothing within the language of article 102.1 which would prevent the Company from directing one road switcher assignment from performing switching inside switching limits to the extent that that switching is entirely related to assembling a consist to be handled outside switching limits by another road switcher assignment. That work, in my view, does not fall within any of the categories of work identified as being exclusive to yard assignments in article 102.1 of the collective agreement.

The grievance must therefore be dismissed. I am satisfied that to the extent that the grievance focuses solely on the preparation of one road switcher assignment by another road switcher assignment relating to work which will ultimately involve the delivery of consists of cars in road switcher service beyond switching limits, no violation of the collective agreement is disclosed. For the purposes of clarity, however, the Arbitrator rejects the suggestion of the Company that by virtue of the language of article 13.6 of the collective agreement employees in road switcher service can be assigned to

perform industrial service anywhere within a radius of thirty miles from the point at which its crew reports for duty. When all of these provisions of the collective agreement are read together, it is clear that any industrial work performed by road switcher assignments other than the assembly of road switcher consists must be performed outside switching limits. I conclude that the grievance cannot be allowed, not on the basis of the language of article 13.6, but rather because of my conclusion that the work assigned to Road Switcher assignment 582 on September 16, 2010 did not involve work executed in violation of article 102.1, which is to say that it did not involve work exclusive to yard assignments as defined in that article.

For the foregoing reasons the grievance is dismissed.

June 15, 2012

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MICHEL G. PICHER  
ARBITRATOR