

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 4114**

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 rescue through freight trains.

**UNION'S STATEMENT OF ISSUE:**

On November 26, 2010, the crew of train 452 requested rest after ten hours on duty in accordance with the collective agreement. The train was not able to reach its destination terminal in that time and was secured at North Saskatoon Siding at Mile 7 on the Warman Subdivision. The Company officers on duty in Saskatoon directed an on duty Road Switcher assignment to rescue this train and bring it into Saskatoon Yard.

The Union submits that the rescue of train 452 had nothing to do with the Road Switcher's regular duties and that Road Switcher crews are not to be utilized to rescue through freight trains. The Company's directions to rescue this train are contrary to articles 62.1 and 96.4 of agreement 4.3.

The Union submits that the Company should have ordered a pool crew or yard crew to rescue this train, in accordance with agreement 4.3. The Union requests that the employees adversely affected by this directive be compensated a 100 mile runaround and that the Company be directed to cease and desist utilizing Road Switcher crews in this manner.

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**

The facts presented reveal that on November 26, 2010 train 452 was stopped short of its objective terminal, Saskatoon Yard. The train, which was operating in single subdivision service and not in extended run service, ceased operating by reason of its crew requesting rest after ten hours on duty, as is their right under the terms of the collective agreement. As reflected in the *ex parte* statement of issue, the train was then secured in a siding at Mile 7 of the Warman Subdivision, territory that falls within the switching limits of the Terminal of Saskatoon. Saskatoon is a location identified in article 112.6, the preamble of which states:

At the locations listed hereunder assignments in road service shall be filled from the Conductors' and Assistant Conductors' seniority lists and regular assignments in yard service shall be filled from the Yard Service Employees' seniority lists.

The Company directed a road switcher assignment to rescue the train which effectively expired not in road territory, but within the switching limits of Saskatoon. The Union submits that the work so assigned to the road switcher was in violation of article 62.1 and 96.4 of the collective agreement. Article 96.4 reads, in part, as follows:

**96.4 (a)** In order to provide rescue service to trains in extended runs, yard crews may be used within a distance of 50 miles outside the established switching limits.

...

**(c)** Crews will be called in rescue service utilizing any one of the following options:

- Yard crews within a distance of 50 miles outside established switching limits
- Spareboard
- Pool, extended run or single sub (when single sub crews are used they will be kept on their own territory).

The Company argues that the foregoing provision has no application in the case at hand. It takes that position on the basis that article 96.4 which is entitled “Rescue Service – Extended Runs” applies only to extended runs. Train 452, its representatives stress, was not an extended run train. Rather, it operated on a single subdivision.

I find that submission compelling. A reading of the article in question would indicate that the purpose of the parties was to give some latitude for yard crews to venture beyond switching limits, to a defined extent, to provide rescue service to extended run trains. As appears from sub-paragraph (c), the Company also has the option of assigning spareboard employees or employees in pools servicing either extended runs or single subdivisions, so long as a single subdivision crews are kept on

their own territory. While it appears that there is nothing in that provision which contemplates road switchers being involved in the work so described, that is not a matter that arises in the instant case as the stranded train here under consideration was not on an extended run and article 96.4 cannot have any application, as the Company correctly argues.

What then of article 62.1, which the Union also alleges was violated? That article provides as follows:

**62.1** Train service employees assigned to regular trains will not be required to do other work than that to which they are regularly assigned, except in case of wrecks, when no other train service employees are available.

The title of article 62 is “Not Required to do Work Other Than That to Which Regularly Assigned”.

In the Arbitrator’s view there is some difficulty with the Company’s argument. Its argument with respect to the ambit of assignment which can be given to a road switcher turns on the language of article 13.6 of the collective agreement which provides as follows:

**13.6 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.

As noted in **CROA&DR 4113**, article 13.6 is essentially a compensation provision, falling under the general rubric of article 13 which is entitled "Rates of Pay – Road Other Than Passenger Service". While the language of that article does give some flavour as to the nature of the work performed by road switchers, and the geographic limit within which that work is performed, I can find no basis to conclude that it is somehow preeminent over the provisions of article 102.1 which defines work which is agreed to be exclusive to yard service employees.

Article 102.1 reads 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.

In my view neither article 102.1 nor article 13.6 can on their face be said to clearly designate that rescue work of single subdivision trains within switching limits belongs to either yard assignments or road switcher assignments. To the extent that article 102.1 makes no mention of rescue assignments within yard limits being exclusively reserved to yard service employees, it is difficult to find in that provision any contractual basis to prevent the assignment which the Company made to the Saskatoon road switcher assignment in the rescue of train 452 within yard limits. While in my view it would have remained open to the Company to assign yard service employees to rescue train 452 in that circumstance, the Union has addressed me to no contractual

provision which expressly would deny to a road switcher the ability to perform the same rescue assignment. That is particularly true to the extent that train 452 is itself a road assignment, albeit one which fell short of its objective terminal. If anything, the assignment given to the road switcher in respect of rescuing train 452 is more consistent with the Company's right, reflected in article 13.6, to run road switcher service employees "in and out and through their regularly assigned initial terminal ...".

While it is true that that language will generally apply to the normal road switcher assignments they perform, it is more closely consistent with the rescue work which was assigned in respect of train 452 than is the definition of yard service work as reflected in article 102.1 of the collective agreement which deals expressly with transfer, construction, maintenance of way and work train service as well as industrial work within a terminal. In the circumstances I cannot find any basis upon which yard service employees have any better claim to the rescue of road assignment 452 than would a road switcher assignment based in Saskatoon. If anything, article 112.6 would give the better right to complete road assignment 452 to road service employees. Nor, in my view, are the decisions of this Office in **CROA&DR 3502 and 3220** particularly instructive to the dispute at hand. The first involved the wholesale replacement of a yard assignment by a road switcher while the second examined the basis upon which yard assignments were allowed to do certain switching work beyond yard limits, as defined in the *Larson Award*.

In the result, I cannot find that the Union has pointed me to any provision of the collective agreement which would prevent the assignment of a road switcher based in Saskatoon to perform the rescue of a road assignment stranded within yard limits.

For these reasons the grievance must be dismissed.

June 15, 2012

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MICHEL G. PICHER  
ARBITRATOR