

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 4115

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 November 10, 2010, the crew on the 520 Road Switcher assignment was directed to pick up 101 cars at the Viterra Elevator at mile .05 on the Warman Subdivision and transport them to track SC20 in the Saskatoon Yard.

The Viterra Elevator is entirely within Saskatoon switching limits and is within a Saskatoon Yard Industrial Zone. As such, work performed at this location belongs to Saskatoon Yard crews.

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 as described in CROA 3502.

The Union submits that, as this work 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

The Union grieves the assignment of Road Switcher 520 to perform an industrial switching assignment at the Viterra Elevator which is within the Saskatoon switching limits. In the Union's submission that work belongs exclusively to yard service employees, being industrial work in connection with the terminal. Article 102.1 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.

The Company relies on the language of article 13.6 of the collective agreement.

That article provides as follows:

Road Switcher Service

13.6 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."

For the reasons already expressed in **CROA&DR 4113** and **4114**, article 13.6 is primarily a compensation provision, not a provision which trumps or qualifies the work jurisdiction assigned to yard service employees within article 102.1 of the collective agreement. That article was extensively addressed by this Office in **CROA&DR 3502**. That case involved the abolishment of a yard assignment and the effective transfer of all its work to a road switcher at Regina. In that award the arbitrator made the following comments:

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.

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 short answer to this grievance is that the Union is correct and that the work assigned to Road Switcher 520 on November 10, 2010 was clearly "industrial work in connection with terminal" as enunciated in the second sentence of article 102.1, which is to say it was yard switching work to be assigned to yard service employees and not to employees in road service, including road switcher service.

Article 13.6 of the collective agreement does not, as the Company submits, give to it the discretion to assign yard switching to road switchers on the purported basis that

the yard switching would fall within the radius of thirty miles of a road switcher crew's reporting point. The work of road switchers is primarily to be performed in road territory, beyond yard switching limits, save as relates to switching in relation to the marshalling of road switcher consists destined beyond yard switching limits.

On the foregoing basis the grievance must be allowed. It must be stressed, however, that the grievance succeeds as relates to the factual circumstances disclosed in relation to Saskatoon. It emerged during argument that there may be contrary practices established at other locations, one example offered without substantial contradiction being Vancouver. Where local agreements, past practice or the waiver of the Union's rights may be established at other locations, different considerations and conclusions may be justified. Obviously, each case must be determined on its own factual merits.

Nor, in my view, is this an appropriate case for the awarding of a remedy decision in accordance with those provisions of the collective agreement which deal with blatant and indefensible violations of the collective agreement. As indicated above, the practice which the Company has followed in this case, which I find to be contrary to the collective agreement, appears to have been pursued without objection by the Union elsewhere. In that circumstance I am not inclined to conclude that the extraordinary provisions of the remedy protections apply.

The Arbitrator therefore finds and declares that the Company did violate the provisions of article 102.1 of the collective agreement as well as article 62.1, and directs that the employees affected be compensated at a 100 mile runaround payment.

June 15, 2012

MICHEL G. PICHER
ARBITRATOR