

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4253**

Heard in Calgary, November 12, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The abolishment of the Conductors pool in Canora, SK.

JOINT STATEMENT OF ISSUE:

On or about April 27, 2012, the Company unilaterally abolished the Unassigned Conductors pool in Canora, SK.

It is the Union's position that the Collective Agreement, including but not limited to, the Separate Pool Agreement, mandates the use of a Conductors pool for all unassigned train operations in Western Canada.

The Company disagrees.

FOR THE UNION:
(SGD.) R. A. Hackl
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

D. Brodie	– Manager Labour Relations, Edmonton
K. Morris	– Senior Manager Labour Relations, Edmonton
P. Payne	– Manager Labour Relations, Edmonton
D. Crossan	– Manager Labour Relations, Prince George

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
R. Hackl	– General Chairman, Saskatoon
R. Thompson	– Vice General Chairman, Saskatoon
J. Robbins	– General Chairman East, Sarnia
J. Lenny	– Vice General Chairman East, Port Robinson

AWARD OF THE ARBITRATOR

The straightforward issue in the instant grievance is whether the Company has discretion to abolish Conductors' Pools where such pools exist at terminals on the Prairie and Mountain Region.

The history of bargaining between the parties confirms that operating pools, which involve the first in-first out assignment of running trades employees, have existed for many years at the terminals in Western Canada. The record confirms that in August of 1991 a document entitled "Separate Pool Agreement" provided, in part, as follows:

Operation of Pools

- 2.1 Each terminal will have separate pools as set out below for subdivisions as mutually agreed:
 - a) Conductor pool
 - b) Brakeman Tail-end pool
 - c) Brakeman Head-end pool

Note: the Conductor and Brakeman's Tail-end and Head-end Pools will cycle independently from one another out of the Home Terminal only.

- 2.2 Pools will be regulated weekly.
- 2.3 Each position in a pool will be given a number which will be used to keep a record of turns. At board adjustment, the number of Brakemen positions will equal the number of Conductor positions in the respective subdivision pools.

Additionally, in 1992, the parties signed a letter of understanding which recognized the terminal of Canora, Saskatchewan as having separate Conductor and Brakeman pools apparently as part of a trial project of what was then termed the "746 sign-up system". The language of that agreement reflects the parties' understanding that all trains on the identified subdivisions were to be operated by pool crews.

In 1995, following the release of the interest arbitration authored by then Judge George Adams, the parties negotiated the 746 Agreement. Article 11 of that agreement made provision for unassigned road service and related pools, providing, in part, as follows:

11.1 Each terminal will have separate pools as set out below:

- a) Conductor Pool
- b) Assistant Conductor Pool (where applicable)

Note: The Conductor and Assistant Conductor Pool (where applicable) will cycle independently from one another out of the Home Terminal and Away from Home Terminal.

11.2 At board adjustment, the number of Assistant Conductor positions (where applicable) will equal the number of Conductor positions in the respective subdivision pools.

The above arrangement was eventually overtaken by the shift towards conductor-only service. By the unchallenged representation of the Union, by 1995 some eighty percent of freight operations in the Prairie and Mountain Region was being operated on a conductor-only basis.

The language developed under the 746 document has been inserted into the Collective Agreement where it now appears under the provisions of Article 107.67, as follows:

Each Terminal will have separate pools as set out below:

- a) Conductor Pool
- b) Assistant Conductor Pool (where applicable)

Note: The Conductor and Assistant Conductor Pool (where applicable) will cycle independently from one another out of the Home Terminal and Away from Home Terminal.

The Company's representatives explained the reason for abolishing the Conductors' Pools at Canora. Their submission to the Arbitrator notes that in the normal course two conductors at Canora were placed in the freight pool while between one and five conductors were on the spare board. Effective April 27, 2012 the Company took the decision to operate only a single spare board in Canora. That decision appears to have been motivated by the fact that frequently conductors assigned to the pool were unavailable to respond to calls for vacancies on assigned road-switchers or extra road-switchers. It appears that such vacancies could only be filled by pool conductors when the conductor's spare-board was exhausted, with the resulting problem of the unavailability of pool conductors when needed. The Company therefore decided to give itself greater flexibility and ensure more availability of manpower by discontinuing the conductor's pool and effectively making all assignments from the spare board. It is that change, made on April 27, 2012 which prompted the instant grievance.

The instant dispute is one of significant importance to the parties. There appears to be little dispute but that pool assignments are generally more desirable than holding work only from a spare-board. It does not appear disputed that, particularly in the case of a joint spare board, where employees can be compelled to perform yard work, working from a spare board can result in lower earnings and less desirable work than can be realized through a position in a road assignment pool.

The Union submits that the Pool system, said to have been in operation for some twenty-two years, is an inherent part of the Collective Agreement bargain, in respect of which the Union may have made concessions in bargaining and that nothing in the Collective Agreement indicates that the existence of pools is a matter within the discretion of the Company. In the Union's submission the language of Article 107.67 of the Collective Agreement is clear, and is mandatory. The submission of the representatives of the Company is that the provisions of Article 107.67 are not intended to grant a mandatory right to the existence of pools, but rather to reflect the possibility of there being separate pools for conductors and assistant conductors.

The Arbitrator has substantial difficulty with the Company's argument. As noted above, the existence of pools and the possibility of achieving a bid position within a pool is an employment interest of substantial value to running trades employees. Pools give them access to road assignments, generally considered the most lucrative in the system, consequently attracting the most senior running trades employees.

Additionally, I consider it notable that Article 44 of the Collective Agreement, which establishes mileage regulations central to the remuneration of conductors, makes specific provision for the governance of road and joint spare-boards as well as pools. In that regard, Article 44.12 reads as follows:

The following mileage figures are to be used when adjusting road and joint spare boards or pools on a 7-day basis:

- a) Unassigned and assigned pools – 1125 miles
- b) All road or Joint spare boards – 1078 miles

A review of the overall scheme and framework of the Collective Agreement confirms to the Arbitrator's satisfaction that for many years the concept of pools has been an inherent element of the method of assignment and the potential compensation of Conductors in the Prairie and Mountain Region. That has been so by the agreement of the parties. As stressed by the Union's representatives, there is nothing in the language of the Collective Agreement which would expressly give to the Company the discretion to abolish pools at any given terminal. While from the standpoint of strict interpretation the Company's representatives are correct in saying that the language of the Collective Agreement nowhere expressly says that pools are to be mandatory or that existing pools are to remain in existence, I find that argument to be of doubtful consistence with the overall scheme and intention of the Collective Agreement.

In the Arbitrator's view the better view is that the existence and preservation of pools, in accordance with the terms established within the Collective Agreement, is an intrinsic part of the fundamental bargain between the parties in the system of work assignments and potential remuneration established within the terms of their agreement. Against that framework, I am compelled to agree with the Union that the first sentence of Article 107.67 which states "Each terminal will have separate pools as set out below:" reflects the understanding of the parties that pools are to exist at each terminal. I also agree with counsel for the Union that there is nothing in the language or framework of the Article in question to suggest that the establishing or preservation of pools at any given terminal is a matter within the discretion of the Company. Clearly, against the history reviewed above and the express language of the Collective

Agreement, I am compelled to conclude that should the Company wish to abolish pools at any given terminal, it can do so only through bargaining with the Union, given the well-established existing framework of the Collective Agreement, and the language of Article 107.67.

Alternatively, if I am not correct in my strict interpretation of the provisions of the Collective Agreement, I would be compelled to the same result on the basis of the application of the doctrine of estoppel. The material before me confirms that for decades the parties have bargained the terms of their Collective Agreement predicated on an understanding of the ongoing existence of pools for unassigned service in Western Canada. I am satisfied that the parties have repeatedly renewed their Collective Agreement with the understanding that pools would continue to exist, having regard to their obvious importance in relation to the earnings opportunities of senior conductors. On that basis, therefore, at a minimum the Company would be estopped from making any change in respect of pools for the duration of the current Collective Agreement. However, for the reasons stated above, I am satisfied that the history of these provisions and the language of the current Collective Agreement sustain the primary position of the Union as to the interpretation and application of the parties' agreement with respect to the existence of pools at terminals on the Prairie and Mountain Region.

For the foregoing reasons, the grievance must be allowed. The Arbitrator finds and declares that the Company violated the Collective Agreement by purporting to abolish the pools at Canora on or about April 27, 2012. The Arbitrator directs the

Company to cease and desist from the implementation of that abolishment and that it re-establish the Canora unassigned Conductors' pool forthwith.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR