

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4259

Heard in Calgary, November 13, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Grievance advanced by the Union in response to the Company's practice of calling ad hoc Road Switchers and relief of Road Switchers contrary to the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On April 27, 2012, the Company served notice on the Union that it would cancel CTY Local Agreement #14 which addressed payment and working conditions of Road Switcher assignments at Medicine Hat, operating on Maple Creek, Brooks and Taber Subdivisions. CTY Local Agreement #14 had provided, *inter alia*, specific terms by which relief for road switcher assignments could be called and established a fixed rate for this relief work.

The Union grieves that, since the cancellation of CTY Local Agreement #14, relief for road switcher assignments has neither been called, nor compensated, as required under the Collective Agreement. The Union seeks a finding that the Company has violated the Collective Agreement, including Articles 12, 19 and 20, and an order that the Company cease and desist its ongoing breaches of the Collective Agreement. The Union seeks damages to compensate its members for their losses associated with the above breaches in addition to such further relief the Arbitrator deems necessary in order to ensure future compliance with the Articles in question.

The Company disagrees with the Union's position, and seeks an order that the grievance be dismissed.

FOR THE UNION:
(SGD.) D. Fulton for D. Olson
General Chairman

FOR THE COMPANY:
(SGD.) D. Burke for D. Freeborn
Director of Labour Relations

There appeared on behalf of the Company:

D. Burke	– Manager, Labour Relations, Calgary
D. Guerin	– Director, Labour Relations, Calgary
B. Sly	– Director Labour Relations, Calgary
D. Freeborn	– Director, Technical Training, Calgary

There appeared on behalf of the Union:

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| D. Ellickson | – Counsel, Caley Wray, Toronto |
| D. Olson | – General Chairman, Calgary |
| D. Edwards | – Vice General Chairman, Medicine Hat |
| D. Fulton | – Vice General Chairman, Calgary |
| D. Finnson | – Vice President, Calgary |
| D. Able | – General Chairman, Calgary |
| G. Edwards | – Vice General Chairman, Revelstoke |

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that for many years regular Road Switcher Assignments were established as bulletined positions, as contemplated under Article 19 of the Collective Agreement. Rates of pay for persons so assigned are established under Article 1.12 of the Collective Agreement. It does not appear disputed that in the event a regularly assigned employee in Road Switcher Service is absent from work that individual could be replaced on a relief basis by an employee from the spare board, in which case the individual in question would be paid at Road Switcher rates. Nor does it appear disputed that at Medicine Hat, as at other locations, Road Switcher Service has traditionally been established as regular assigned service. The instant dispute arises by reason of the Company's implementation of the concept of extra or ad hoc Road Switcher crews who have recently been called from the spare board at Medicine Hat and compensated at Road Switcher Service rates.

Article 1.12 of the Collective Agreement establishes rates to be paid for Road Switcher Service. Its title and lead sentence read as follows:

1.12 Road switcher Service
Rate of pay for Trainpersons assigned to road switcher service shall be: [rates]

The practice which the Company has instituted at Medicine Hat, which has given rise to this grievance, is constituting extra or ad hoc Road Switcher Assignments, not by bulletin, but by calling employees from the spare board and constituting them as an extra or ad hoc Road Switcher. Employees so directed have been compensated at Road Switcher rates, contrary to the position of the Union in the instant grievance. The Union submits that employees so called and utilised must be compensated at rates for unassigned freight service.

It does not appear disputed that over many years of practice the Company has not resorted to establishing extra Road Switcher Assignments, manned by employees off the spare board, and compensated at road switcher rates. The general rule appears to be, subject to one exception, that employees called from the spare board to perform Road Switcher Assignments are to be compensated at unassigned freight rates, and not at Road Switcher Service rates. In the Arbitrator's view a significant indicator of that fact, and arguably the best evidence of the understanding of the parties and their acceptance of the principle that extra Road Switcher Assignments are not to be established and paid at Road Switcher rates is reflected in a passage drawn from a document drafted in 1992, entitled Standard Payment Rules, apparently authored by a respected Company representative, the late Mr. Brian Scott. In that document Mr. Scott writes, in part: "Claims for payment as Road Switchers may be submitted only by employees manning **regular** Road Switcher Assignments. Even this most basic rule has an exception as it is understood that, at Sudbury, extra Road Switchers are operated and paid under Road Switcher Rates and Conditions." (emphasis added).

Road Switcher Service is conceived as what may fairly be characterized as the opposite of extra or unassigned service. Employees who have the benefit of working in Road Switcher Service hold their positions on the basis of a bulletin, generally with a clear knowledge as to their days and times of work and the earnings which they can expect to receive. That is to be contrasted with the employment prospects of employees on spare boards, in unassigned service, who may be called for work in any number of forms of service, whether on the road or in a yard, with commensurate uncertainty as to their potential hours and conditions of work or their ultimate earnings.

In the Arbitrator's view it is significant to appreciate that for many years Road Switcher Service has been assigned service pursuant to a system of bulletins and bidding, to be substantially contrasted with unassigned service and employment off a spare board. While employees on a spare board may be called to perform relief work in Road Switcher Service, receiving Road Switcher Rates of Pay, that is consistent with the overall scheme in relation to the calling to work of assigned service employees. What is significantly different in the instant case is that the practice the Company newly introduced at Medicine Hat effectively places the "extra" or ad hoc Road Switcher assignments now being utilised entirely outside the normal contractual framework by which bulletined Road Switcher Service has operated.

As can be seen from the foregoing, the Company's new practice is substantially contrary to the payment rule described in the document prepared by Mr. Scott in 1992. That document confirms that only regular road switcher assignments are to receive payment on the basis of Road Switcher Rates. It is noteworthy that Mr. Scott goes on to describe that fact as "this most basic rule", identifying only one exception, as apparently existed by the agreement of the parties at Sudbury.

On the whole, therefore, having regard to the material filed, I have substantial difficulty with the submission of the Company to the effect that there is no expressed prohibition against the establishment of extra Road Switcher Assignments from the spare board in a manner that is effectively unprecedented. In my view, the better view is that the past practice and the established expectation built up over many years is that, as the Union submits, in the face of the need for Road Switcher Assignments the Company has two options: it can create, bulletin and fill a Road Switcher Assignment in accordance with the rules of the collective agreement or, in the event of utilising persons on an extra or ad hoc basis, it can pay them at the proper rate which applies to unassigned freight. That conclusion, in my view, is the more compelling, given the well-established distinction within the framework of the collective agreement between assigned and unassigned service, the latter being generally associated with service off a spare board.

The grievance must therefore be allowed. The Arbitrator finds and declares that the Union's interpretation of the collective agreement is correct, and that the practice

instituted by the Company at Medicine Hat with respect to creating extra or ad hoc Road Switcher assignments paid at Road Switcher rates is contrary to the Collective Agreement. As requested by the Union, in light of this declaration I remit the matter to the parties for further discussion as to the appropriate remedial steps and retain jurisdiction.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR