

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4268**

Heard in Montreal, December 10, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's ability to deny an employee's bid to perform "other service" under Article 4.1 of the 4.2 Collective Agreement. Specifically, Yard Coordinator Nick Serieska denied an opportunity to work as a conductor at spring Change of Card in April 2010.

JOINT STATEMENT OF ISSUE:

Prior to the 2010 Spring Change of Time, Mr. Serieska was working as a Yard Coordinator. At the 2010 Spring Change of Time, Mr. Serieska bid a Conductor position on train 422, turn 2. The Company denied Mr. Serieska's bid and as a result, Mr. Serieska was required to continue to work as a Yard Coordinator.

The Union alleges that the Company violated Article 4.1 of the 4.2 Collective Agreement when it forced Mr. Serieska to occupy a position as Yard Coordinator. The Union further alleges that Mr. Serieska would have been the successful applicant for train 422 in April of 2010 and that there were sufficient qualified Yard Coordinators to protect the operation without holding Mr. Serieska back. The Union alleges that the Company is also in violation of Article 31 of the 4.2 Collective Agreement and that the Company violated Article 85 and Addendum 123 of the 4.16.

The Union seeks to have Mr. Serieska made whole in this instance. The Union is also seeking a remedy in this instance, as this was a blatant and deliberate violation of the Collective Agreement.

The Company disagrees. The Company asserts that the release of a Yard Coordinator to perform service, other than that of a Yard Coordinator, is conditional upon the operation being protected and does not require Union agreement. The Company acted in accordance with the collective agreement. The Company further asserts that agreement 4.16 is not applicable in the circumstances.

FOR THE UNION:

(SGD.) J. Robbins

General Chairperson CTY Central Region

FOR THE COMPANY:

(SGD.) V. Paquet for J. Orr

Senior Vice President Operations Eastern Region

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
D. VanCauwenbergh	– Director Labour Relations, Toronto
D. Gagne	– Senior Labour Relations Manager, Montreal
D. Larouche	– Labor Relations Manager, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Port Robinson
N. Serieska	– Grievor, Port Robinson

AWARD OF THE ARBITRATOR

The Union alleges that the Company has improperly impeded the grievor's right to leave work as a Yard Coordinator and to return to road or yard work as a Conductor as of the Change of Card in the spring of 2010. In support of its position the Union notes that an unassigned Yard Coordinator junior to the grievor was in fact allowed to bid to work as a Conductor, thereby achieving an earnings potential not made available to the grievor.

The material before the Arbitrator confirms that at Port Robinson there were three Yard Master positions. At the spring Change of Card of April 15, 2010 Mr. Serieska was the successful applicant bidding on a Conductor's position on train 422, turn 2. However, on the final run of the Change of Card on April 23, 2010 the Company forced the grievor onto the position of night yardmaster at Port Robinson, essentially a continuation of the position which he held.

After a review of the material, the Arbitrator is satisfied that the Company acted in a manner consistent with its rights under the collective agreement. In that regard Article

4 of the collective agreement is critical to the resolution of this dispute. It reads as follows:

4.1 Provided at each Spring and Fall Change of Time there are sufficient qualified Traffic Coordinators available to fill the positions vacated, up to 25% of employees holding positions as Traffic Coordinator, and who held seniority under Agreements 4.3 or 4.16, may be permitted to choose to perform other service. However, the aforementioned is conditional upon the operation being protected and will be jointly monitored by the parties.

The Company submits that in the application of the foregoing provision, it must be recognized that the grievor was one of three employees holding a regularly assigned position as Traffic Coordinator on the Traffic Coordinators' seniority list at Niagara Falls prior to the 2010 spring change of card. In other words, Mr. Serieska constituted one third of the compliment of employees "holding positions as traffic coordinator" within the contemplation of Article 4 of the collective agreement. As one of three such persons he affectively constituted one third on the employees holding positions as traffic coordinator, well in excess of the twenty five percent threshold contemplated within the provisions of Article 4.1 of the Collective agreement. In that circumstance, I am compelled to agree with the analysis of the Company and conclude that the conditions were not established which would have permitted the grievor to choose other service.

For all the foregoing reasons the grievance must be dismissed.

December 16, 2013

MICHEL G. PICHER
ARBITRATOR