

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4275

Heard in Montreal, January 14, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

Company not abiding by the Track Forces Restructuring Agreement when it comes to winter assignments and the assigning of work to existing zone work forces.

JOINT STATEMENT OF ISSUE:

In January 2013 the Company assigned fourteen employees from Track Services to work in the Rail yard in Winnipeg, MB on temporary winter assignments.

The Union submitted a Step 3 Grievance on January 11, 2013 contending that the Company has violated the provisions as outlined in the Track Forces Restructuring Agreement, including:

- i) Item #3 Track Services Workforce (Production Gangs);
- ii) Item #10 Track Maintenance Work Force (Zone employees);
- iii) Item #6 Training;
- iv) Q&A Items # 7, 21 & 22.

The Union contends as well that the Company is in violation of Article 15.3 and Article 15.11 (c) and (d) of Agreement 10.1.

The Union contends that the Rail Yard is a standalone seniority territory as per Article 2.5 of 10.8 and these positions should have been bulletined as per the collective agreement.

The Company's position is that there has been no violation of the Track Forces Restructuring Agreement or Agreement 10.1 in establishing the winter assignments at the Rail Yard and has declined the grievance.

FOR THE UNION:
(SGD.) M. Piché
Staff Representative

FOR THE COMPANY:
(SGD.) B. Laidlaw
Manager Labour Relations

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
S. Grou	– Senior Manager Labour Relations, Montreal
K. Luke	– Manager Track Services, Winnipeg
T. Wincheruk	– Assistant Chief Engineer, Winnipeg
D. Laurendeau	– Manager Labour Relations, Montreal

There appeared on behalf of the Union:

M. Piché	– Staff Representative, Toronto
G. Colli	– Chef Steward, Winnipeg

AWARD OF THE ARBITRATOR

The dispute before me relates to allegations by the Union that the Company has violated the Track Forces Restructuring Agreement (“TFRA”) between them “when it comes to winter assignments and the assigning of work to existing zone work forces.”

The Union contends #3, #6 and #10 of the TFRA were violated. These provisions are not about winter assignments and the assigning of winter work to existing work forces. Rather, they have to do with the Company’s commitment to establish 207 permanent positions in the Track Services workforce, as well as its commitment to establish of 320 permanent Track Maintenance positions on the Prairie Region and 518 such permanent positions on the Mountain Region. I understand that #6 of the TFRA relates to the Company providing training associated with the establishment of the aforementioned permanent positions. These positions were to be posted on Special Bulletins (which Bulletins I understand were reviewed by the Union in May 2011). These

clauses of the TFRA are simply not relevant to the issue of whether the temporary winter assignments to the Rail Yard were appropriate, and certainly the winter assignments in dispute did not violate #3, #6 or #10.

The dispute before me raises two issues. The first is whether the Company violated certain provisions of the Track Forces Restructuring Agreement (“TFRA”), and articles 15 of Agreement 10.1 when it assigned 14 track services employees to winter assignments at the Rail Yard in Winnipeg between January and the end of March in Winnipeg in 2013. The second issue is whether in assigning the track service employees to different shifts than those worked by regular employees in the Rail Yard, the Company violated Q/A 7 of the TFRA.

The Union argued that since the Rail Yard is not a “Zone” location, article 15 of Agreement 10.1 required the Company to advertise and fill on bulletin the winter assignments. The Rail Yard has permanent employees with separate and distinct classifications and seniority groups from Track Services and Zone Maintenance employees. The Rail Yard is a stand-alone seniority territory under Supplemental Agreement 10.8.

Winter assignments are short-term temporary assignments that, prior to the TFRA, were posted as temporary positions pursuant to the Winter Work Agreement (“WWA”) signed by the parties in September 2009. Winter positions were established with the intent of “keeping all of the Engineering Department employees represented by

the Union working throughout the winter months.” Prior to the implementation of the TFRA employees were assigned the Rail Yard for the winter months. With the implementation of the TFRA and the establishment of a permanent workforce in Track Services as well as the restructuring of the Track Maintenance workforce, the WWA was no longer required and thus was cancelled in May 2011.

The parties agreed to a new process to fill winter assignments (a few months of work) when the TFRA was implemented. The process did away with the Company issuing bulletins, which had previously been integral to the WWA.

The Company and the Union also have a “modification” process whereby Track Services employees can declare a preference, by seniority, for a particular winter assignment at a different location than their home location. If operational needs can be met, the Company grants employee preferences. In this case, the Company included winter assignments in the Rail yard in the modification process, and eight of the winter assignments were filled by employee preference. The Company then assigned junior Track Services employees to fill the six other assignments.

To assist in the application of work rules in the TFRA, in Appendix E the Company and Union formulated questions and answers to assist in determining their intent. In the Definitions section of Appendix E, Track Services and Zones and Zone Maintenance are defined:

Track Services: This term refers to the Production workforce that would be assigned to work over the entire Prairie and/or Mountain Regions. Under the

Track Forces Stabilization Initiative, the Track Services workforce will be permanent positions that will perform capital work during the seasonal period, and these employees will be assigned to the Zones for the winter months.

Zones and/or Zone Maintenance: This term refers to Track Maintenance Forces.

Company Q/A #7 of Appendix E of the TFRA reads:

Q7. Will the traditional Winter Work assignments still be bulletined to Track Services employees for the winter?

A.7. No. Track Services employees will be assigned to the Zones for the winter without the need for a bulletin. When the Track Services staffing schedule is produced at the beginning of the year, each Track Service employee will be placed on a Zone according to need and will be placed as close as possible to their home to minimize travel on their rest days and must be assigned to existing work forces. This is not to set up new positions and gangs. In these cases the jobs must be bulletined prior.

In my view, it is clear that the parties did not intend to bulletin traditional winter assignments. At the time the Union entered into the TFRA it was well aware that Track Services employees were doing the temporary winter work in the Rail Yard and in my view, the parties' answer to that question demonstrates their intention to eliminate the need for bulletining winter assignments including those in the Rail Yard. I do not accept that by failing to specifically reference the Rail Yard in the parties' answer to Q7 that the parties meant to preclude the Company from assigning Track Services employees to the Rail Yard.

The changes within the Track Services and Track Maintenance groups pursuant to the TFRA were designed to improve operational efficiencies and provide, by means of

winter assignments, work for employees during the winter months. The assignment of the Track Services employees to the Rail Yard did not confer seniority upon the assigned employees in the Rail Yard under article 2.5 of Supplemental Agreement 10.8, and did not affect terms and conditions of the regular Rail Yard employees. In these circumstances, the Company was entitled to assign Track Service employees to the Rail Yard between January and March 2013 without the need to bulletin the assignments.

With respect to the second issue, namely the reference to the requirement that the Company assign Track employees to “existing work forces,” (see Q/A #7 above), the term “existing work forces” must be understood in context. Where winter assignments are made throughout the territory, which is the context here, the reference in Q7 to “existing work forces” means that the Company is prohibited from temporarily assigning Track Services employees to locations where there were no regular Track Maintenance forces working. To interpret “existing forces” to mean “alongside” or necessarily on the same shift as existing workforces, would be counterproductive. The Union’s interpretation would impose a restriction on the Company’s ability to have full productive use of Track Services employees during the winter months.

For these reasons, the grievance is dismissed.

January 20, 2014



CHRISTINE SCHMIDT
ARBITRATOR