

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4284

Heard in Montreal, February 11, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The alleged violation of Articles 47.9, 56, 79, 85 and 85.5 of the 4.16 Collective Agreement, and the Union's request for Remedy under the provisions of Addendum 123.

JOINT STATEMENT OF ISSUE:

Following the issuance of a Material Change Notice under the provisions of Article 79 of the 4.16 Collective Agreement, the parties signed an agreement on January 11, 2013 for the closure of the Niagara Falls terminal and agreed to have all of the assignments at Niagara Falls re-bulletined to Port Robinson. The Company re-bulletined a joint spareboard at Port Robinson, the same as existed at Niagara Falls.

The Union grieves that a Road spareboard should have been posted as per Articles 47.9, 56, 79, 85 and 85.5 of the 4.16 Collective Agreement. The Union is also requesting a remedy under the provisions of Addendum 123.

The Company disagrees and has also advised the Union that the grievance is untimely.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.) D. Gagne
Senior Manager Labour Relations

There appeared on behalf of the Company:

D. VanCauwenbergh	– Director Labour Relations, Toronto
M. Marshall	– Senior Manager Labour Relations, Toronto
D. Gagne	– Senior Manager, Labour Relations, Montreal
D. Larouche	– Labour Relations Manager, Montreal
S. Fusco	– Senior Human Resources Manager, Toronto
V. Paquet	– Labour Relations Manager, Toronto

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
P. Boucher	– Vice General Chairman, Belleville

R. Caldwell
M. Byrnes

– General Chairman, Bancroft
– Local Chairman, Capreol

AWARD OF THE ARBITRATOR

By way of notice to the Union dated March 5, 2002 the Company communicated the closure of the home terminal of Niagara Falls. In accordance with that notice all operations would thenceforth be transferred to the new home terminal of Port Robinson, Ontario. It is common ground that the Company operated on the basis of a joint spareboard at Niagara Falls. While at one point a Company officer indicated that a road spareboard might be established at Port Robinson, the Company eventually came to the view that to do so would be excessively costly, given the impact on the calling procedures for traffic coordinators. Based on that concern, the Company departed from its original thought of having a road spareboard at Port Robinson and decided to implement a joint spareboard at that location. There can be little doubt but that a joint spareboard effectively deprives traffic coordinators of significant overtime earnings they would otherwise derive if the Company had followed through with its original thought of establishing a road spareboard at Port Robinson.

The material before the Arbitrator confirms that Niagara Falls was one of the closed yards listed within the Company's system and therefore subject to the following provisions of Article 47 of the collective agreement:

47.9 At the locations listed hereunder, assignments in road service shall be filled from the Road Service Employee's seniority lists and assignments in yard

service shall be filled from the Yard Service Employee's seniority lists:

Portland	Toronto	St. Thomas
Island Pond	Oshawa	Niagara Falls
Richmond	Hamilton	St. Catharines
Sherbrooke	Brantford	Welland
Montreal	Woodstock	Fort Erie
Brockville	London	Port Colborne
Ottawa	Sarnia	Chatham
Belleville	Stratford	Oakville
Trenton	Kitchener	Barrie
Peterboro	Guelph	Gravenhurst
Lindsay	Goderich	South Parry
Midland	Windsor	Capreol

47.10 If joint spare boards are maintained to perform spare work in yard service at the locations listed in paragraph 47.9, as far as is practicable they shall be manned by employees from both the Road and the Yard seniority lists. The ratio of road service-to-yard service employees manning such boards shall be, as far as is practicable, proportionate to the number of employees from the respective seniority lists actually required to perform the service rendered by the spare board during the previous semi-monthly checking period (15th and end of month). The ratio shall be preserved, as close as is practicable, when the board is adjusted.

The Company's representative submit that nothing in the collective agreement compels the employer to establish a road spareboard, as opposed to a joint spareboard, in any given circumstances. While it is true that Port Robinson is not a closed yard within the list reproduced above, as was the case with Niagara Falls, the Union has drawn to the Arbitrator's attention no provision of the collective agreement which would compel the Company to establish a road spare board at Port Robinson, or, conversely, prevent it from establishing a joint spareboard, as it did. Article 56.1 of the collective agreement speaks to the establishing of spareboards, however briefly, in the following terms:

Article 56.1 At locations where necessitated by operational requirements, road and/or yard and/or joint spareboards will be maintained.

There can be little doubt but that the setting up of a road spareboard at Port Robinson would be financially advantageous to yard coordinators and that the decision to establish a joint spareboard at that location is less advantageous to them. Most significantly, however, the Arbitrator is directed to no provision of the collective agreement which would prevent the Company from establishing a joint spareboard at Port Robinson, as it has chosen to do. From the standpoint of “operational requirements” it appears that the Company is able to discharge the work obligations which it has at that location by using a joint spareboard. While it might also be able to do so using a road spareboard, as the Union would wish, I can see no contractual basis to find that the Company was obligated to prefer a road spareboard over a joint spareboard in moving the Niagara Falls work, which had previously been run from a joint spareboard, to Port Robinson, preserving the same spareboard structure. It does not appear disputed that the employees at Port Robinson can be assigned to either road or yard work.

In the circumstances I am compelled to agree with the Company that the onus is upon the Union to point to a collective agreement obligation on the part of the Company to operate a road spareboard at Port Robinson. I can find no such obligation in the material before me. At most, what the evidence indicates is that at one point during the discussions between the parties Company officer mused that it might be appropriate to establish a road spareboard at Port Robinson. Obviously, the Company later thought

better of that plan when it took into account the substantial cost it might incur in respect of the assignments of traffic coordinators should it opt for other than joint spareboard.

I can find nothing in the material before me that limited the Company's discretion in choosing to establish a joint spareboard at Port Robinson. Very simply, nothing in the collective agreement to which I have been addressed would prevent the Company from establishing a joint spareboard, as it did.

For all of the foregoing reasons the grievance must be dismissed.

February 17, 2014

MICHEL G. PICHER
ARBITRATOR