

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4377

Heard in Calgary, March 10, 2015

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The increase in the crew consist from that of conductor only crew to a reduced freight crew consisting of a conductor and an assistant conductor in through freight service on trains operating out of the away-from-home terminal.

UNION'S EXPARTE STATEMENT OF ISSUE:

On August 17, 2013, Mr. Glenn and Mr. Eisenstadt (both from the home terminal of Belleville) were called for train M37231 17 at their away-from-home terminal for the position of conductor and assistant conductor, respectively. Mr. Glenn subsequently submitted claims for conductor only bonuses, which were declined by the pay office.

It is the Union's position that train M37231 17 met the criteria for conductor only operations at the away-from-home terminal and therefore Mr. Eisenstadt cannot be called as an assistant conductor.

Article 27.13 clearly establishes that a conductor at the away-from-home terminal may only be called to work as an assistant conductor out of the away-from-home terminal if the train for which called does not meet the criteria of conductor only, and then, only if there are no assistant conductors available at the away-from-home terminal.

Mr. Eisenstadt, if not required to work as a conductor out of the away-from-home terminal prior to the 14th hour should have been deadheaded to his home terminal (Belleville), this as per the provisions of Article 18.6 of Agreement 4.16 and CROA Jurisprudence.

It is the Union's position that conductor Glenn is entitled to all conductor only bonuses as provided for in Articles 2.1, 2.4 and 2.5 of Agreement 4.16.

The Union is seeking a remedy under the provisions of Article 85 and Addendum 123 of Agreement 4.16.

The Company disagrees with the Union's position.

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

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- D. VanCauwenbergh – Director Labour Relations, Toronto
- V. Paquet – Manager Labour Relations, Toronto
- A. Daigle – Manager Labour Relations, Montreal

There appeared on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- J. Robbins – General Chairperson, Sarnia
- J. Lennie – Vice General Chairperson, Port Robinson

AWARD OF THE ARBITRATOR

This grievance is filed on behalf of Conductor Glenn as a time claim grieving the non-payment of Conductor Only bonuses. On August 17, 2013 the Company assigned Conductor Eisenstadt as an assistant conductor on Train M37231 on August 17, 2013. In doing so, the grievor, Conductor Glenn, was not paid Conductor Only bonuses to which he would have been entitled were Conductor Eisenstadt not been assigned.

On the day in question the Union says there were in fact too many crews at the Mac Yard in Toronto and not enough trains leaving back to Belleville.

The Company position is that the Collective Agreement supports its position that it was entitled to add Mr. Eisenstadt as an assistant conductor and that once it did so the Conductor Only premiums were not applicable.

Both Mr. Eisenstadt and Mr. Glenn's home terminal is Belleville. On August 17, 2013 they were at the away-from-home terminal at Mac Yard in Toronto. Mr. Glenn was called at the away-from-home terminal as the Conductor on the return trip to Belleville.

Mr. Eisenstadt was assigned as assistant conductor. Both Mr. Eisenstadt and Mr. Glenn were then part of the crew.

There is some history relevant to this dispute. On July 12, 1991 the parties negotiated a Memorandum of Settlement regarding change to the crew consist for freight trains operating in through freight service only. This arrangement applies in the 17th Seniority district which includes all of Ontario and the portion of Kingston subdivision extending to Montreal. The agreement now forms part of Agreement 4.16 and is found in Article 11.7. I reproduce both relevant provisions found in 11.4 and 11.7 below:

Freight Service

11.4 Except as otherwise provided herein, all freight, work and mixed trains will have a conductor and one assistant conductor. On mixed trains, the assistant conductor may be used to handle baggage, mail and/or express.

Note: where presently used in Agreement 4.16, the term "reduced freight crew consist" shall hereafter refer to a crew consist of one conductor and one assistant conductor.

...

11.7 Notwithstanding the provisions of paragraph 11.4, trains operating in through freight service may be operated with a conductor but without an assistant conductor provided that:

- a) Such trains are operated without a caboose;
- b) At the initial terminal, doubling is limited to that necessary to assemble the train for departure account yard tracks being of insufficient length to hold the fully assembled train;
- c) At the final terminal, doubling is limited to that necessary to yard the train upon arrival account yard tracks being of insufficient length to hold the train;
- d) Notwithstanding the provisions of Article 41, such trains are not required to perform switching in connection with their own train at the initial or final terminal; if switching in connection with their own train is required at the initial or final terminal to meet the requirements of the service, (except to set off a bad order car or cars or lift a bad order car or cars after being repaired), the conductor will be entitled to a payment of 12 ½ miles in addition to all other earnings for the tour of duty.

- e) Such trains are designed to make no more than three stops en route (i.e., between the initial and final terminals) for the purpose of taking on and/or setting out a car or group of cars together;

NOTE: (this Note: is only applicable to the First Seniority District). For the purposes of clarity, the taking on or setting out of cars at a yard (other than the yard in which the train originates or terminates) at terminals where there are a series of yards (such as Halifax and Montreal) will not count as a stop in the application of sub-paragraph 2.5 will be payable when cars are taken on or set out at such yards in conductor-only operation.

- f) Such trains are not required to perform switching en route (i.e., between the initial and final terminal) except as may be required in connection with the taking on or setting out of cars as, for example, to comply with the requirements of rules and special instructions governing the marshalling of trains;

The Union highlights that the Conductor only operations represented a substantial benefit to the Company and a commensurate loss of positions and assignments to the Union. The premium payments were the trade-off to, at least partially, to compensate for that loss.

As noted above. Mr. Eisenstadt and Mr. Glenn are both assigned out of the Belleville pool. All through freight jobs at Belleville are advertised as conductor-only. The Union relies on the following facts: Train M37231 normally runs from Toronto to Belleville as Conductor Only, it is advertised for bidding purposes as Conductor Only, crew information provided that for the 53 trips after the August 17, 2013 assignment that train operated with a crew consist of Conductor-Only and finally there was nothing in the run that did not meet the conditions set out in (a) through (f) of Article 11.7 that allows for the train to run Conductor Only.

The Union says that this assignment in these circumstances constitutes a violation of the 4.16 Collective Agreement which governs these parties. The Union refers firstly to Article 27.13 of the Collective Agreement which provides:

Through Freight Service – Away From Home Terminal

27.13 It is recognized that flexibility in the crewing of trains out of the away from home terminal is of critical importance. Therefore, notwithstanding their assignment out of the home terminal, conductors and assistant conductor will cycle independently out of the away from home terminal on a first-in, first-out basis in their respective classifications except that:

- (a) Conductors may be called to work as assistant conductors back to the home terminal to meet the requirements of service such as a train on which an assistant conductor is required and there are no assistant conductors available at the away-from-home terminal. Employees so used will be paid therefore at the conductor's rate.

Note: When a conductor and assistant conductor are required for a train out of the away from home terminal and there are no assistant conductors available, the two conductors standing first out and available at the away from home terminal will be used and the senior employee will work as conductor.

The Union contends that Train M37231 met the criteria for a Conductor Only train and should have been run as such. The Union's position is that the sole reason that the Company added Mr. Eisenstadt as an assistant conductor on August 13, 2013 was to avoid the premium payments to which Conductor Glenn.

The Union says that if the Company required an assistant conductor on this occasion, it should have assigned one from the Toronto spare board or had the run bid from the Belleville pool.

The Company argues that it is at its sole discretion whether to operate it's through freight service as Conductor only and refers to the plain and permissive meaning of the

word “may” found in Article 11.7. it relies too on Article 2.7 of the 4.16 Agreement which provides that notwithstanding that a train meets the criteria for operation with a crew consist of one conductor only, conductor only allowances are not paid when an assistant is employed on the train.

The Company references **CROA&DR 3595** both in support of the parameters of the Conductor Only provisions and for the statements found in that case on managerial rights on scheduling.

The Company contends that since there was both a Conductor and an Assistant Conductor on this train, there were no premium pay entitlements to be claimed.

That then leads to the provisions of Article 27.13 and the way the Company is to assign an assistant conductor to this train. In this case there were no Belleville assistant conductors at the away from home terminal and so Conductor Eisenstadt was called as assistant conductor and compensated as contemplated under Article 27.13(a).

The Union asserts that these runs are bid on as a pool and although the Company can identify an assistant conductor it must either establish a pool or assign an assistant conductor from, in this case, the Toronto road spare board. Article 27.9 of Agreement 4.16 provides:

Trains which have been identified as requiring an assistant conductor pursuant to Article 11 will be crewed by:

- a) Conductors from the applicable conductor's assignment, pool or set of runs established pursuant to sub-paragraph 27.4 (b) hereof, and

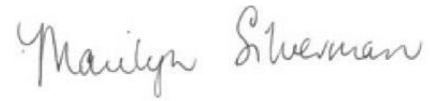
- b) One assistant conductor from the applicable assistant conductors' assignment, pool or set of runs as established pursuant to sub-paragraph 27.4 (c) hereof. When such assistant conductor is not available, a spare assistant conductor will be called.

Given the material before me and the language of the Collective Agreement (specifically Article 11.7) the Company was not required to operate this train as Conductor Only. The Company could employ the use of an assistant conductor. The Company has the right to direct its operations and in the absence of clear language supporting the Union's position, it cannot be sustained. It is clear from the language of Article 11.7 that the Company has the option of operating Conductor Only under certain conditions. The provision uses the word "may"; trains operating in through freight service "may" be operated Conductor Only. The Company is not obliged to operate Conductor Only even if the conditions in Article 11.7 a) to f) are met. Further the Company appears to have complied with Article 27.13(a) in the assignment and payment of both Mr. Eisenstadt and Mr. Glenn.

The Union suggests that the Company was required to either establish a pool or comply with the provisions of Article 27.9 of Agreement 4.16 in respect of the Toronto spare board in respect of the assignment on the day at issue. Even if it were, that does not change the conclusion that the Company could operate with a conductor and an assistant conductor in accordance with the language of Article 11.7 and the analysis presented above. In that event, the Conductor only premiums payments would not have been payable to Conductor Glenn. In that regard, the grievance must be dismissed.

As to whether the Company was required to apply other provisions of the Collective Agreement in its assignment on that day, that is remitted to the parties for further consideration and resolution. In the event they are unable to do so. I remain seized.

August 28, 2015



MARILYN SILVERMAN
ARBITRATOR