CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4449

Heard in Montreal, February 10, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The ability of mechanical employees to move rail cars to and from the repair tracks for repairs within the Capreol yard.

JOINT STATEMENT OF ISSUE:

On July 21, 2014 employees from the Company's Mechanical Department switched the CN 618015 from SO46 to MO01 within Capreol Yard.

It is the Union's position that the switching of cars are the core duties of employees governed by the 4.16 Collective Agreement. The Union further contends this work is the work of the TCRC-CTY under Article 41 of the 4.16 Collective Agreement. The Union submits that this practice is in violation of Articles 41, 56, 61, 85 and 85.5. The Union is requesting that Mr. Bedard be paid a basic day at yard rates. The Union further requests a Remedy under Addendum 123.

The Company disagrees and denies the Union's request. The Company also relies upon past practice and letters between the parties. In addition, the Company submits the Union forfeited their claim for a Remedy when they refused to meet.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) J. Robbins	**(SGD.) V. Paquet for J. Orr**
General Chairman	Vice-President Eastern Canada

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
M. Marshall	– Senior Labour Relations Manager, Toronto
P. L. Benoit	– Articling Student, Toronto
M. Ethier	– Retired District Mechanical Officer, Toronto
D. Larouche	– Labour Relations Manager, Montreal

And on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
A. Weir	– Vice General Chairman, Sarnia

AWARD OF THE ARBITRATOR

This case is about the movement of a freight car from a repair track back to the yard at Capreol Yard. The car was being moved after a repair. The Company assigned employees from its mechanical department (car mechanics) represented by Unifor, to move the cars. The Union contends this work is "switching", the core duty of its bargaining unit, and as such, is the work of yard service employees, exclusively. In addition to other arguments, the Union says that the Company's assignment violates Article 41.1 and 41.2 of the 4.16 Collective Agreement:

> **41.1**
> Except as provided in Article 12 of Agreement 4.16, the following will apply: switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yard service employees are employed, be considered as service to which yard service employees are entitled, but this is not intended to prevent employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks. Upon arrival at the objective terminal, road crews may be required to set off 2 blocks of cars into 2 designated tracks.
>
> **41.2**
> At points where yard service employees are employed and a spare list of yard service employees or a joint spare list from which yard service employees are drawn is maintained, yard service employees if available, will handle work, wreck, construction, snow plow and flanging service other than that performed continuous with a road trip in such service, and be paid at yard rates and under yard conditions.

The Union also relies on Article 56.4 (b) (3) of Agreement 4.16 in asserting that the work at issue belonged to its yard crew employees:

> An active spare board will be maintained at each home station from which spare and relief will be drawn. Employees on spare boards shall be entitled to:
>
> (b) In Yard Service:
> …
> (3) extra yard assignments.

The Company contends that the work performed by the mechanical employees giving rise to this grievance is not work that the Union has exclusive jurisdiction over, and never has been.

On July 21, 2014, the grievor, Conductor Bedard was working as a road switcher out of Capreol terminal. At the end of his shift he submitted pay tickets for the work he had done that day as well as one for the movement of a freight car by the mechanical department from a repair track back to the yard. The grievor was denied payment for the work performed by the mechanical department, thus giving rise to this grievance. There are a number of related grievances held in abeyance by the parties pending the disposition of this grievance. Those grievances involve either retrieving a rail car from the yard or returning it to the yard after repair.

Mechanical employees at the Company are responsible for the repair and inspection of rail cars on CN lines. Damaged rail cars in need of repair (referred to also as bad order or “BO” cars) are assigned to car mechanics. On the day in question, after completing repairs a mechanical employee moved the repaired car from the repair track to track M001 in the yard. He did so by use of a trackmobile which is a self-propelled vehicle that operates either on the rails or on the ground.

The Union asserts exclusive jurisdiction over this work as switching within the yard as contemplated under Article 41.1. It relies on a number of cases from this Office

preventing the utilization of road crews from performing yard transfers; it being work reserved for yard service employees. (**CROA&DR 3043, 3182**, and **AH 556, 557, 608**). In these cases this Office held that road crews could not perform switching in the yard other than in connection with their own trains. The cases clearly state that this work was reserved exclusively for yard service employees. In addition, the Union relies on **AH 516** and **CROA&DR 3976** where this Office found a violation of the collective agreement where the Company assigned the work of traffic coordinators to management personnel; holding that the core functions of a bargaining unit position had been transferred out of the unit.

As part of its position that switching in the yard belongs exclusively to its bargaining unit members, the Union further relies on a local agreement in Capreol regarding a third party (Luzenac) performing work at Foleyet, Ontario. That agreement, the Luzenac agreement, records in its preamble that all switching at Foleyet on CN property is the core duty of those employees covered by the 4.16 Agreement.

The Company contends that the practice of moving bad order cars into and out of the repair area by car mechanics is long standing; and in Capreol specifically, moving bad order cars by mechanical employees has been occurring on a regular basis for at least fifteen years. It contends that the assignment to car mechanics of moving damaged cars out of the repair area is more efficient in making room for other cars requiring repair. The Company maintains that the TCRC-CTY does not have exclusive jurisdiction over the movement of bad order cars and that this issue has been decided in

CROA&DR 69 and **3585**. **CROA&DR 3585** concerned OCS cars that contained ballast being moved by use of a speed swing track mobile or other “self-propelled vehicle”. In that case the arbitrator found that the work being performed by the maintenance of way employees was in furtherance of or in the course of performing their work. Although that case was decided under a different collective agreement, that agreement also prescribed the work jurisdiction of the Union. The Company argues that these decisions are directly on point.

The Company also relies on Addendum 108 signed in 2001 which addressed concerns regarding work performed in the yards by the TCRC (then CCROU) in relation to work performed by other crafts. That addendum confirmed that switching activities performed in the CN yards and CN facilities was to be performed by the Union (with a limited exclusion not relevant to the present case). Notably however, the addendum also states that the rights of other crafts “such as the performance of duties incidental to their work” were not limited by that agreement.

The jurisprudence upon which the Union relies involves disputes about work being done in the yard; that is the switching of cars by road service employees. I can see the analogy that the Union attempts to draw with these cases but I am of the view that the cases relied on by the Company are applicable in to the instant case.

The cases upon which the Company relies, most significantly **CROA&DR 3585** deals with work done, in that case, for the purpose of the maintenance of way functions.

In the instant case, the car mechanics are retrieving and returning bad order cars that the mechanical department has worked on. They are retrieving and returning the cars as a limited extension of the function of the repair. This characterization of the work is consistent with addendum 108 which does confirm that, with one minor exception, switching activities performed in the CN yards and CN facilities will be performed by the this bargaining unit. Notably however, the addendum recognizes that other crafts perform duties incidental to their main functions and the addendum does not operate to limit those. Applied to the instant case, the limited work performed by the car mechanics cannot be found to be work exclusive to the TCRY-TCY bargaining unit.

Accordingly, having regard to the facts giving rise to the grievance, the collective agreement language, the relevant case law found in **CROA&DR 69** and **CROA&DR 3585** and the ongoing practice involving the limited retrieval and return of bad order cars, I find that the work performed by the mechanical department in this case, is not a violation of the 4.16 collective agreement.

Having regard to the foregoing, this grievance is dismissed.

March 4, 2016

MARILYN SILVERMAN
ARBITRATOR