

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

**CASE NO. 4458**

Heard in Montreal, April 14, 2016

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The Union claims payment under 2.14 (a) of the 4.16 Collective Agreement is owed to Conductor J. Armstrong for picking up or setting out diesel units on September 30, 2014 .

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

On September 30, 2014 while working as the Conductor on train L59431 02, Joseph Armstrong claimed an LC payment under article 2.14 (a) of the 4.16 Collective Agreement for assisting the Locomotive Engineer to pick up the CN 2666 and couple it to the CN 4610 between 0410 – 0425 hours.

The Union submits that Conductors who assist the Locomotive Engineer to pick up or set out a diesel unit or units that are not already coupled are entitled to the payment set out in Article 2.14 (b) of the 4.16 Collective Agreement.

In the alternative, the Union claims that the Company has a past practice of paying Conductors who assist the Locomotive Engineers to set out or pick up a diesel unit (or units) involving their locomotive consist and that therefore the Company is estopped from discontinuing this payment.

The Union is seeking Mr. Joseph Armstrong is repaid the amount of \$10.25 as claimed for the LU claim.

The Union further seeks a remedy under addendum 123 of the 4.16 Collective Agreement for the blatant and indefensible violation of the Collective Agreement.

The Company disagrees and denies the Union's request. The Company denies there is a past practice. In addition, the Company submits the Union forfeited their claim for a Remedy when they refused to meet.

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

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

There appeared on behalf of the Company:

- V. Paquet – Labour Relations Manager, Toronto
- D. VanCauwenbergh – Director Labour Relations, Toronto
- C. Michelucci – Director Labour Relations, Toronto
- J. Krawer – Retired Manager Labour Relations,
- R. Helmle – Manager CMC East,
- D. Larouche – Manager Labour Relations, Montreal

And on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- J. Robbins – General Chairman, Sarnia
- J. Lennie – General Chairman, Sarnia
- J. M. Hallé – General Chairman, Lévis
- S. Savage – General Chairman, Lévis

### **AWARD OF THE ARBITRATOR**

The grievor Conductor Armstrong claimed a locomotive coupling (LC) payment for work performed on September 30, 2014 in Capreol.

The dispute between the parties concerns the application of Article 2.14(a) of the 4.16 Collective Agreement. That provision provides in relevant part as follows:

Picking up and Setting Out Diesel Units in Road Service

2.14 Conductors called for road service who assist the Locomotive Engineer to set out or pick up a diesel unit (or units) involving their locomotive consist will be paid an allowance of:

- (a) Picking up one or more than one unit already coupled or setting out one or more than one unit together –

EFFECTIVE

July 23, 2013	July 23, 2014	July 23, 2015
16.51	10.25	10.56

- (b) Picking up or setting out more than one unit not already coupled or setting out more than one unit where units must be uncoupled –

EFFECTIVE

July 23, 2013	July 23, 2014	July 23, 2015
16.51	17.01	17.52

The Union submits that the work the Grievor met the requirements for the allowance claimed under this article. It asserts that Conductor Armstrong was on road switcher service, utilizing a single engine (CN2666) to assist the locomotive engineer to pick up a diesel unit involving his consist. The diesel unit then became two units from one. The Union acknowledges that simply moving from one set of power to another does not draw payment but argues that Conductor Armstrong did not simply do that, but rather added an engine to his locomotive consist.

The Company says that the Grievor was not setting off or picking up a diesel unit “involving his own consist”, but rather assembling the consist of another train. As such the Company says the Grievor was performing switching in the yard, and that work did not attract the LC payment. In that regard it relies on Article 12.6 which reads:

Employees in Road Switcher Service may be required to perform switching, transfer work and industrial work wholly within the recognized switching limits”.

It is undisputed that on the day of the events giving rise to this grievance the Grievor was assigned to assignment L59431 02 (a night road switcher assignment out of Capreol) (“L594”). The unit he lifted (CN2666) and added to the two units on Track MO02 departed Capreol the next day as the locomotive consist for A41231. Conductor Armstrong’s ticket for the work performed shows that he lifted CN2666 and moved it to Track MO02 where he coupled it to two other units. The coupling was for the purpose of assembling Train A41231. The description of the work done is consistent and not in dispute.

The Union says that the Grievor was on duty on road switcher service and not on yard service, but agrees that he was assigned as the conductor on train L594. The Union contends that the Grievor added to his consist from one diesel unit to two. The Union submits that the conductor is creating a new consist and should be compensated. It asserts that anytime a locomotive engineer moves an engine consist under the direction of the conductor and brakeman, it is “their consist” and meets the definition of Article 2.14 for payment.

The Union relies on the decision in **CROA&DR 4312**. In that case the Company attempted to exclude from the premium the initial starting point of the assignment, this Office held that the term “involving their locomotive consist” was broad and “...taken to mean the setting out or picking up of diesel units that will be involved in the composition of the locomotive consist of a conductor’s train in road service.”

I find that, in this case, the specific requirements of Article 2.14 were not met. If the Union’s position were correct then any movement of locomotives in the yard would fall under Article 2.14 and attract the payment. There would be no meaning attributed to the words “involving their locomotive consist”. The Union’s interpretation would read out that phrase, which is an essential element to qualify for the LC payment.

As to the Union’s reliance on **CROA&DR 4312**, this Office rejected the Company’s position that the initial movement was not compensable under Article 2.14 on the basis that there was nothing in the language of that article that excluded the

initial assembly. It is clear from that Award that all elements of establishing, adding or subtracting units from one's own consist draws the LC payment. However, that is not the factual pattern of this case. The consist being moved was not the Grievor's consist but was in the fact being assembled as part of the A412 consist. CN 2666 was not Conductor Armstrong's consist as the work was not for the purpose of the L594 consist (the Grievor's consist) it did not fall within Article 2.14. As such the LC payment was properly denied.

Accordingly, the grievance is dismissed.

June 21, 2016



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**MARILYN SILVERMAN**  
**ARBITRATOR**