

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4469**

Heard in Calgary, June 14, 2016

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The Company violated Articles 7, 11, 41 and Addendum 123 of the 4.16 when the Company instructed Conductor Luutzen Vanderwey to set off his cars in a track that contained cars.

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

On July 3, 2014 Conductor Vanderwey was instructed to handle cars that did not pertain to his train in violation of Article 7, 11, and 41.

Upon arrival at BIT Yard there were clear tracks available for the Conductor Vanderwey to set his out in but the Company had him handle cars that did not pertain to his train. The Union is seeking a significant remedy in accordance with Addendum 123 of the Collective Agreement in this instance for the Company's violation of the Collective Agreement.

It is the Union's position that the Company blatantly and indefensibly violated Articles 7, 11 and 41 of the 4.16 Collective Agreement when the Company simply chose to ignore their obligations the Collective Agreement.

Given the Company's disregard for the 4.16 Collective Agreement, arbitral jurisprudence and the decisions handed down from the CIRB including CIRB 315 the Union seeks a substantial remedy under Addendum 123.

The Company disagrees with the Union's contentions and declines the Union's request.

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

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
D. VanCauwenbergh	– Director Labour Relations, Toronto
C. Mackay	– Superintendent Operation, Toronto

S. Maltais – Executive Assistant, Toronto

There appeared on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto  
J. Robbins – General Chairperson, Sarnia  
J. Lennie – Vice General Chairperson, Port Robinson

### **AWARD OF THE ARBITRATOR**

This arbitration concerns the instruction to conductor Vanderwey to handle cars not pertaining to his train, resulting in the alleged violation of articles 7, 11 and 41 of the 4.16 Collective Agreement by the Company.

The events giving rise to the Union's grievance happened on July 3, 2014. That day, Conductor Vanderwey was ordered from Belleville to Toronto on train Q107. When the Grievor arrived at the Brampton Intermodal Terminal ("BIT"), he was told to set off his cars into two separate tracks.

He was instructed to pull into track Y203 and cut after a designated 80<sup>th</sup> car holding onto the DTTX 620029 (cut #1). After that, he was instructed to set out 44 cars into track Y204 holding onto the DTTX 655970 (cut #2). Mr. Vanderwey was then instructed to couple the remaining 36 cars onto the cars already present on track Y201 to push them further down Y201 to fit the remaining cars in said track.

The Union alleges that the third and final manoeuvre, the coupling of the remaining cars onto track Y201, was not pertaining to the Grievor's train and, as such, should have been conducted by the yard service employees. The Union claims that the Company

ordered the coupling for its convenience and cost saving reasons, notwithstanding the incurring violation of article 41 and others of the 4.16 Collective Agreement.

On or about July 3, 2014, Mr. Vanderwey then filed a time claim or step I grievance which was declined on July 9<sup>th</sup>, 2014. The Union then filed, on August 10, 2014, a step II grievance, which was declined in October 2014. The Company stated at that time that “[...] stacking cars is not a violation of Article 41” on that instance. Following the Company’s decision, the Union then progressed its grievance to step III on November 24, 2014.

The point of contention between the parties is the question of whether the coupling of Mr. Vanderwey’s remaining cars to the ones already on track Y201, and their following movement by him, should be considered “work required in connection with their own train” within the meaning of article 41. The Company claims that such was the case while the Union opposes that view.

The articles of the 4.16 Agreement regarding the operation of trains within switching limits, where Yard Service Employees normally exclusively operate, must be interpreted in relation with each other in order to fully understand their meaning. They all revolve around article 41, which is the centerpiece provision defining the exceptions where a road service employee can operate a train within a yard’s switching limits:

**Article 41 - Yard Service Employees' Work Defined**

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.”

To better understand the intent behind article 41, one can consult CN’s own 2010 Employee Training regarding this provision. It was developed by the Company, after numerous costly litigations, to avoid further violations of the Agreement. In its introduction, the document states that:

“It is well established that road employees are forbidden from performing switching tasks within the switching limits determined for a given location. The only acceptable exception to this rule allows a road service crew to perform the “switching required in connection with their own train and putting their own train away...” Arguably, there are debatable inconsistencies on this issue, however, until negotiated differently, the rules as they are now require strict compliance.”

Further, it specifies the purpose of article 41 of the 4.16 Agreement and indicates the role of road service employees, the document reads:

“Article 41 was established to clearly specify the work reserved exclusively for yard service employees versus road service employees.

Article 41 applies at locations where yard crews are employed.”

[...]

“When inside switching limits [road service freight crews] perform only specified work in connection with their own train such as putting the train together or storing it away.

[...]

If the road crew does work on someone else’s train, they are doing yard crew work and this would be considered a violation of article 41.”

Articles 7 and 11 of the 4.16 Agreement offer additional details surrounding what road crew are allowed to do when operating within switching limits of a yard. These

articles nonetheless must be applied in harmony with article 41 and cannot be separated.

Articles 7.9 and 11.7 read, in part, as follow:

#### **ARTICLE 7 – Terminal Time – Freight Service**

**7.9** Should a train be delayed at the signal controlling movement into a yard or terminal, yard limit board or behind another train similarly delayed, final terminal time shall be computed from the time the engine reaches that point of delay until time conductor registers off duty. However, should the crew be held on duty thereafter to perform service in connection with their own train or terminal switching (full crew will be used) the terminal time will be extended to include the time so occupied, provided that:

[...]

**(d)** in the application of the provisions of Article 41, when employees in road service are instructed to yard their train in a particular track at a terminal and such track will not hold the entire train, they will double over surplus cars or a designated cut of cars to another yard track. In cases of yard congestion where there is insufficient room to double over all cars to one track it will be necessary to double over to more than, in the manner described above, to effectively yard the train. Employees (including those working in a conductor only operation) required to double over designated cuts of cars will be paid 12½ miles in addition to all other earnings for the tour of duty.

**(e)** Upon arrival at the objective terminal, road crews may be required to set off 2 blocks of cars into 2 designated tracks.

[...]

**NOTE:** Except as provided in sub-paragraph 7.9 (d), employees will not be required to marshall trains upon arrival at terminals (e.g.: setting over 10 cars for one destination to one track, and 10 cars for another destination to another track).

#### **Article 11 – Consist of Crews – Reduced Freight Crews**

**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:

[...]

**(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;

This Office has had the occasion of interpreting whether coupling one's train to another can still be considered work pertaining to their own train. In **ADHOC 560**, arbitrator Picher dealt with several cases where the Union for Western Canada claimed the Company violated Conductor Only provisions. Regarding one of such instances, similar to the present case, the arbitrator wrote:

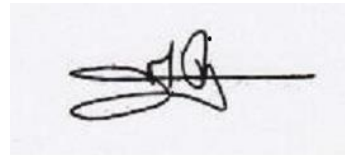
“Tab 12 of the Union's examples book concerns train 356 from Jasper final terminalled at Edmonton on November 2, 2001. The crew was directed to pull their train into Bissel Yard and set off twenty-one cars to track BS02, while holding onto ten cars. They then placed those head end ten cars into track BS01 before re-coupling onto the twenty-one cars in BS02. They then proceeded to Walker Yard where they pulled through track CS56. Finally, they backed into track CS57, coupling to cars already in that track. In the Arbitrator's view the setting off of ten cars at Bissel Yard involved switching in connection with their own train within the contemplation of the conductor only rules. However, requiring the crew to couple onto cars already in track CS57 in Walker yard involved work which is not in connection with their own train. That work was therefore in violation of the conductor only agreement.”

Upon reading the relevant articles, CN's training document and **ADHOC 560**, it is clear that having a road crew perform work on another train within switching limits is not considered to be “switching required in connection with their own train” or “putting their own train away”. As such, it is forbidden by article 41.

Thus, having Conductor Vanderwey couple the remaining cars of his train to a set of cars already in track Y201 and move the latter clearly was not “[...] switching required in connection with his own train” as the Company claims. In that situation, either the yard crew should have completed the coupling or the conductor should have been compensated for this additional workload.

The question of whether the yard was congested or that there was insufficient space to put away the Grievor's train is in this case irrelevant. Any situation where a road service crew comes to work on someone else's train within a yard switching is forbidden by article 41, since it is not work pertaining to his own train.

For the above-mentioned reasons, the grievance is allowed. I retain jurisdiction with respect to all aspects of the remedy which might be appropriate beyond the findings and declarations contained in this award.

A handwritten signature in black ink, appearing to read 'M. Flynn', is centered within a light gray rectangular box.

November 3, 2016

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MAUREEN FLYNN  
ARBITRATOR