CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4557

Heard in Edmonton, June 13, 2017

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Multiple disputes regarding the application of Articles 102, 103 and 43 of Agreement 4.3 and actions contrary to the Arbitrator's decision in CROA 4115.

Company's preliminary objection to the Union's attempt to consolidate separate and distinct grievances in one statement of issue and file with CROA&DR for adjudication in a single hearing.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On 15 June 2012 CROA 4115 was released stating, inter alia:

In my view the short answer to this grievance is that the Union is correct that the work assigned to Road Switcher 520 on November 10, 2010 was clearly "industrial work in connection with terminal" as enunciated in the second sentence of article 102.1, which is to say it was yard switching work to be assigned to yard service employees and not to employees in road service, including road switcher service.

Since the release of this decision, the Company has continued to service this, and other industries, utilizing road crews, contrary to Articles and 43 of Agreement 4.3 and contrary to CROA 4115, in various circumstances such as:

> 1) Train RG80651 12, ordered Saskatoon to Saskatoon via Juniata at 23:15, on 12 April 2014 was required to go through Saskatoon to an industry at mile 12.9 on the Warman subdivision to spot 91 cars at an inland terminal. They were then required to turn the rest of their train at the wye at mile 17.3 of the Warman Subdivision and return to Saskatoon Yard.

2) Train G84041 21, ordered Saskatoon to Melville at 20:45 on 20 April 2015, and required to travel to mile 0.5 on the Warman subdivision to assemble a train at an inland terminal, travel back through Saskatoon and on to Melville. 3) Train G80851 30, ordered Wainwright to Saskatoon, at 04:30 on 30 October 2014, and was required to travel through the terminal of Saskatoon and travel to mile 0.5 of the Warman Subdivision, and spot 102 cars at an inland terminal.

It is the Union's position that these actions are in violation of Article 102 as clarified by CROA 4115, as well as being in violation of Article 43. Given that CROA 4115 is directly on point and prohibits these actions, it is also the Union's position that the Company' actions are egregious and a blatant and indefensible violation of the collective agreement, mandating a Remedy in accordance with the collective agreement.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

The Union filed three separate and distinct grievances with the Company, superficially GTS files: CN-TCRC-4.2-4.3-2014-01845 (dated May 21, 2014), CN-TCRC-4.2-4.3-2014-01996 (dated September 8, 2014) and CN-TCRC-4.2-4.3-2014-0335 (dated February 20, 2015).

The Union filed a single ExParte statement of issue and facts including all three separate grievances with the intent to proceed with a single hearing at CROA&DR.

The Company's position is that the Union cannot consolidate multiple (distinct) grievances into a single statement of issue with the intent to an Arbitrator hear all separate grievances in one hearing. The Company contends the Collective Agreement provides for a singular grievance to be progressed by means of statement of issue.

FOR THE UNION:
(SGD.) R. S. Donegan
General Chairman

FOR THE COMPANY:
(SGD.) K. Morris
Senior Manager Labour Relations

There appeared on behalf of the Company:

K. Morris	– Senior Manager Labour Relations, Edmonton
D. Houle	– Labour Relations Associate, Edmonton
C. Michelucci	– Director Labour Relations, Montreal
M. Galan	– Labour Relations Manager, Edmonton
S. D'Andrea	– Articling Student, Edmonton

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Thordjornsen	– Vice General Chairman, Saskatoon
R. S. Donegan	– General Chairman, Saskatoon

PRELIMINARY AWARD OF THE ARBITRATOR

This decision involves only a preliminary and procedural objection. The collective agreement allows the Union to process grievances through a formal three step grievance process. If this does not resolve the issue then the matter (to use a neutral term) can be forwarded for resolution to this Office: The Canadian Railway Office of Arbitration (CROA), under the following collective agreement provisions:

> Final Settlement of Disputes
>
> 121.2 A grievance which is not settled at the Vice-President's Step of the grievance procedure may be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work.
>
> 121.3 A request for arbitration shall be made within 60 calendar days from the date decision is rendered in writing by the Vice-President by filing written notice thereof with the Canadian Railway Office of Arbitration and on the same date a copy of such filed notice will be transmitted to the other party to the grievance.

This brief reference to CROA in the agreement is sufficient. It eliminates the need for a complex arbitration process within the collective agreement itself because CROA is separately constituted.

In this collective agreement, considering all of Article 121.1, my conclusion is that the parties negotiated a process for putting individual grievances through the three-step grievance process individually. They in fact did so in this case. The language in Article 121 refers to "a grievance" and "the grievance". There is no reference to plurals and no express provision for consolidation. While parties, by consent, may agree to alter this

and process several grievances as one, there is no evidence to suggest they have done so here. In fact, it is to the contrary, and the Employer has objected to this effort at consolidation from the first time it was suggested.

The Memorandum of Agreement establishing the Canadian Railway Office of Arbitration and Dispute Resolution in its current form (May 20, 2004 Revision) makes it clear that what is to be received for adjudication is heavily dependent on the terms of the collective agreement of origin. Article 6 refers to our jurisdiction being limited to the arbitration of disputes as described in (A) and (B) but "… conditional always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms of this [the CROA] agreement". I will refer to the procedural terms of the CROA agreement in a moment. Article 7 begins with the words "a request for arbitration of a dispute". The request is to be sent to the "other party to the grievance". In my view the terms "a dispute" and "the grievance" refer back to how disputes and grievances are defined and processed under the originating collective agreement. This conclusion is reinforced by the second paragraph of Article 7 requiring that an Article 6(B) request "shall be accompanied by such documents as are specifically required to be submitted by the terms of the collective agreement which govern the respective dispute". A similar restrictive provision is included in Article 9 of the CROA agreement from Article 6(A) disputes again affirming the primary of the collective agreement language for the processing of grievances and disputes.

This brings us to the procedural requirements of the CROA agreement itself. Of particular importance is the role of the Joint Statement of Issue. Article 7 says specifically for disputes under 6(A), which are the large majority, that:

> A request for arbitration respecting a dispute of the nature set forth in section (A) of clause 6 shall contain or shall be accompanied by a "Joint Statement of Issue". A request for arbitration of a dispute of the nature referred to in section (B) of clause 6 shall be accompanied by such documents as are specifically required to be submitted by the terms of the collective agreement which governs the respective dispute.

Article 10 is very clear on what must happen if they wish to proceed without a joint statement:

> 10. The joint statement of issue referred to in clause 7 hereof shall contain the facts of the dispute and reference to the specific provision or provisions of the collective agreement where it is alleged that the collective agreement had been misinterpreted or violated. In the event that the parties cannot agree upon such joint statement either or each upon forth-eight (48) hours notice in writing to the other may apply to the Office of Arbitration for permission to submit a separate statement and proceed to a hearing. The scheduled arbitrator shall have the sole authority to grant or refuse such application.

Shortly after the 2004 revision, the CROA committee, without actually amending the agreement, sent all the parties and all the CROA arbitrators a letter "Re Ex Parte Statements of Issue". It recommended parties and CROA arbitrators of the need for permission for an *ex parte* statement.

It may well be that, if the parties agree to a Joint Statement that, by consent, presents CROA with more than one grievance for adjudication. CROA would proceed to adjudicate the matters thus combined, but it would be on the basis that, by agreeing to a Joint Statement, the parties waived any collective agreement requirements that grievances proceed individually. However, that is not what happened here. The only way the Union could even purport to bring these matters forward in tandem was to file an *ex parte* statement, in contravention of CROA Articles 7 and 10. It may well be that had the Union sought permission under Article 10, the scheduled arbitrator might have suggested to the Employer that joint processing would be to their mutual advantage, and the Employer might have agreed. But no such application was made and no Employer consent forthcoming.

I find this matter is not properly before this CROA arbitrator because the underlying collective agreement and the CROA agreement dealing with an arbitration under that underlying agreement, contemplates only individual grievances and no unilateral ability by one party to consolidate grievances into one CROA process.

July 19, 2017

ANDREW C.L. SIMS
ARBITRATOR