

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

**CASE NO. 4559**

Heard in Edmonton, June 14, 2017

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The operation of train L531 in conductor only service out of the terminal of Port Robinson.

**JOINT STATEMENT OF ISSUE:**

The Company at the spring change of time, April 2015, advertised train 531 to operate as a Conductor only assignment. Train 531 runs in turnaround service within a 50-mile radius, approximately 35 miles to the turning point.

**UNION POSITION:**

It is the Union's position that a through freight train is the only permissible way to run an assignment in Conductor only operations otherwise it must be run with a "reduced crew" in accordance with Article 11.4.

The Union contends that the Company is in violation of Articles 2.2, 6, 7, 11, 12, 85, and 85.5 by advertising train 531 in the manner that it has.

The Union further contends that a significant remedy is applicable in the circumstances in accordance with Addendum 123.

**COMPANY POSITION:**

The Company disagrees with the Union's position. The work associated with Train L531 is in accordance with Article 11.7. In addition, there is no language in the Collective Agreement to support the Union's contention that a through freight assignment with a crew consist of conductor only cannot operate in turnaround service. It is the Company's position that the reasonable intent of the collective agreement has not been violated and a Remedy is therefore, not applicable.

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

**FOR THE COMPANY:**  
**(SGD.) V. Paquet**  
Labour Relations Manager

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
K. Morris	– Senior Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director Labour Relations, Toronto
C. Michelucci	– Director Labour Relations, Montreal
S. Roch	– Labour Relations Manager, Montreal
J. Thompson	– General Manager, Edmonton
M. Galan	– Labour Relations Manager, Edmonton
D. Houle	– Labour Relations Associate, Edmonton
P. Payne	– Manager Labour Relations, Edmonton

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Port Robinson
J. Lennie	– Vice General Chairman, Sarnia

### **AWARD OF THE ARBITRATOR**

This grievance concerns the way the Company now pays and operates Train L531. It was once operated in Road Switcher Service, and is now operated in what the Employer calls “through freight turnaround service”. The particular grievance was a response to a bulletined assignment of the Conductor’s position on L531 described as:

Port Rob to Port Rob via Seneca T/A Service Operating Five Days a week Tuesday-Saturday operating in Window 1200-2359, Block 7.

It was bulletined as a Conductor only assignment. Each party described how L531 operates, the Union saying:

Train L531 is an assignment that runs between Port Robinson Yard in Southern Ontario and South Buffalo Railway. It enters the CN mainline at mile 22 of the Stamford Sub and runs 33 miles to the South Buffalo Railway Yard in Lackawanna, N.Y. The train then returns to Port Robinson.

The Employer adds:

- Departs Port Robinson and on occasion makes a set off at Fort Erie

- (a point en route)
- On arrival at South Buffalo sets off their entire train (a point en route)
  - Lifts their train at South Buffalo and returns to Port Robinson where it terminates
  - On occasion, after leaving South Buffalo, it may make a lift at Fort Erie (a point en route) on its return to Port Robinson

Until 2009, L531 operated as a road switcher assignment. The Company tried to change that in 2009 but the Union grieved and they went back to the *status quo*. Later the Company says it changed its method of operation because “in 2011 the work requirements changed and the amount of switching required was greatly reduced resulting in the abolishment of the road switcher assignment.” In April 2015 the Company advertised this five-day assignment precipitating this grievance. An ancillary issue arose over the other two days, addressed by this Chair in **CROA 4545**.

The Union views the change as one in name only; that this was and remains a turnaround service assignment operated in road switcher type service. The Employer argues that it had the right to make this change because it has never negotiated limitations on that right. If its operational prerogatives are to be restrained, it must be by clear limitations expressed in the collective agreement. It refers to Arbitrator Picher in **CROA 3595** at page 6:

It is, of course, open to a company to effectively give to a union what might arguably be the most important decision making power with respect to the administration of its operations. That is what the Union effectively claims in the case at hand. There are few managerial prerogatives more important than the scheduling and assignment of work. A surrender of authority over such a key issue, however, should obviously be supported by clear and unequivocal language. No such language is drawn to the Arbitrator’s attention in the case at hand.”  
[emphasis added]

The Union counters with Arbitrator Weatherill's caution in **CROA 1124**:

It is the Company's prerogative to designate the type of service it requires to have performed. It must, however, use the correct designation for the service required. It is the service which controls the rate of payment.

Part of the Union's concern is that, operating in road switcher service, the train used a three person crew (including the locomotive engineer). As it operates now only a two person crew gets work. The Union says, but the Employer disputes, this represents a loss of 26 jobs. Another consequence is the basis on which conductors are paid. In road and yard service, conductors receive a fixed daily rate. In through freight service, employees are paid by the mile to a maximum 4300 miles per month. As L531 runs now, with this turnaround route over a short distance, the conductors cannot earn enough mileage to get to the maximum.

The Union's first argument concerns this reduction to a two person crew. The presumption in Article 11.4 is that freight service operates with a three person crew.

11.4 Except as otherwise provided herein, all freight, work and mixed trains will have a conductor and one assistant conductor...

Years ago, the parties negotiated exceptions which the Union views as concessions that should not be expanded beyond their specific language. These are now set out in Article 11.7:

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:  
(*emphasis added*)

...

(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;

...

(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;

This section is reproduced in full for interpretative assistance. However, the Union says it has no complaint that train L531 violates any of the exceptions (a) to (f). Rather, its complaint is only that the train is not “operating in through freight service” at all.

The Union argues that a through freight “hook and haul” service allows the employees at the destination to book off for rest, which is not allowed here. However, the success of that argument depends upon Buffalo being the final destination rather

than Port Robinson as maintained by the Employer. It is really only a repetition of the Union's main "straight line" approach to through freight service.

The Union views "through freight service" as a type of service which implicitly at least excludes any form of turnaround. This reference to through freight, it argues, involves more than just establishing a rate of pay as argued by the Employer.

The words "through freight service" and "turnaround service", in the Union's view, are mutually exclusive concepts. A service is one or the other. A train in through freight service runs from A to B. Turnaround service runs from A to B and then back to A. The Company sees no such definition or restriction in the collective agreement, and no contractual barrier to running a through freight train in turnaround service. In the Union's view, through freight service simply cannot be read to include "turnaround through freight service". The Union draws some support for this from the references, throughout 11.7, to an "initial and final terminal"; an A and a B; not in its view with an A to A with a turnaround stop at B in between. Beyond that it can point to no definition or restriction that expressly supports its position.

The Union's second argument is this has always been, and remains "road switcher" service. The Collective Agreement defines "Road Switchers":

**Road Switchers**

An assignment which may be operated both within an assigned terminal and/or in turnaround service from an assigned terminal within a radius of fifty (50) miles from the point required to report for duty.

Port Robinson to Buffalo falls within the 50 mile radius limit. Article 2, which deals with Rates of Pay for Road Freight service provides:

Road Switcher Service

2.2 Employees operating on a turnaround basis in Road Switcher type service within a radius of 50 miles from the point where they are required to report for duty will be compensated as indicated in paragraph 2.1(e).

NOTE: If, under the provisions of Article 15, employees in through – freight service convert to wayfreight rates of pay while operating for an entire tour of duty within a radius of 50 miles from the point where they are required to report for that tour of duty, they shall be considered as in Road Switcher Service.

The agreement's provisions governing Road Switcher Services are set out in Article 12. Article 12 provides, in part:

12.1 Employees operating in Road Switcher Service will be paid in accordance with Article 2.2 of Agreement 4.16 and will be governed in accordance with the provisions as contained herein.

...

12.4 Employees operating in Road Switcher Service shall not exceed a radius of fifty (50) miles from the point required to report for duty.

12.5 Employees may be run in and out and through their regularly assigned initial terminal without regard for rules defining completion of trips. Time is to be computed continuously from the time employees are required to report for duty until time released at completion of the day's work.

The Employer agrees that it may operate this train in Road Switcher service as it has in the past. However, there is nothing in the agreement that says it must operate in Road Switcher service just because it is able to do so, or because it operates within the fifty (50) mile radius. The advantage of operating in road switcher service is the amount of switching it can require the three person crew to perform en route. The advantage of running in through freight service is the ability to use a two person crew, but at the cost

of a reduced capacity for en route switching. The Company's justification for the change is what it says is a reduced need for en route switching.

The Union says, once again, "through freight service" and "road switcher service" are mutually exclusive terms. They have differing rates of pay and mechanics of pay in 2.1(a) versus 2.1(e); the one paid per mile and the other per day. However, nothing in the agreement language cited here says that, if a train is capable of being run in road switcher service, it cannot therefore be run in through freight service provided the requirements and limitations for through freight service are met. The Union cited no such limitations in Article 12, or Articles 11.4-11.7 except as noted above. Article 6, referred to below, supports the Employer's position.

The NOTE in 2.2, in the Employer's view, simply provides a conversion process. The Union argues that to qualify for this conversion rate change, the train must perform a certain amount of switching within the 50 mile radius, and to do that, the train must have a Conductor and Assistant Conductor. That may be so, but it is not the factual situation here.

The Union's third argument is that it is Article 6.4 that governs and limits trains in turnaround service. Article 6 deals with the Basic Day:

6.1 The following shall constitute the basic day:

(b) in freight service, 100 miles or less, 8 hours or less (straight-away or turnaround).

...



6.4 Employees in unassigned freight service may be called to make short trips or for turnaround service (with the understanding that one or more turnaround trips may be started out of the same terminal) and paid actual miles, with a minimum of 100 miles for a day, provided:

(a) that the cumulative road mileage of all trips does not exceed 120 miles,

(b) that the distance run from the terminal to the turning point does not exceed 30 miles, and

(c) that employees will not be required to commence a succeeding trip out of the initial terminal after having been on duty 8 consecutive hours except as a new tour of duty, subject to Article 30 and at their own option. If employees subsequently accept a call and elect to leave the terminal on a succeeding trip in accordance with the foregoing, they must accept all the conditions attached to such new tour of duty, including the time-on-duty requirement of 11 hours before rest can be taken.

NOTE: The provisions of this paragraph 6.4 will not prevent the operation of regular assignments in short turnaround freight service subject to an appeal by the Union under Article 84.

The Employer notes Article 6.6 which requires straight-away service for over 100 miles, but by inference, and by 6.1, contemplates freight service in turnaround mode.

6.6 Employees in freight service will be called for straight away service where the distance from the initial terminal to the turn-around point is 100 miles or greater.

Articles 6.4 and 6.6 read together, the Company says, mean that an assignment over 30 miles but under 100 miles can be operated in turnaround service. The Union says Article 6.4 limits the use of such turnaround service to 30 mile turning points.

The Union and the Employer both agree that Article 6.4, including the NOTE at the end have no direct relevance here. Article 6.4(b) limits its application to a 30 mile radius and this train runs out 33 miles. The Union adds that Article 6.4 applies to

unassigned freight service only, and was intended for use in *ad hoc* situations where a customer required only limited switching.

The Employer notes that the Union has not submitted any case law supporting any of its positions. The Employer maintains it has consistently operated through freight trains in turnaround service with only a two person consist where the provisions of Article 11.7 are met.

The Company maintains it has historically (beyond this route) run through freight trains with a crew consist of conductor only (i.e. A to A via B) for years without complaint. To support this, over the Union's objection, it sought to introduce a journal cataloguing the "number of trains operated in conductor only turnaround service in Eastern Canada 2013 up to and including March 21, 2017".

After examining this data following the hearing the Union noted that, by listing both Locomotive Engineers and Conductors, it doubled the number of runs involved, which were only about 7,000. It also identified 2,600 assignments that were outside the agreement's geographical scope. It then argued that many of the remaining were relief assignments, where the relief crew, like the crew they were relieving, met the Conductor only requirements. However, if the Company is correct that the original crew was going from A to A via B, the fact a relief crew did the same thing would not advance the Union's position. In other situations, it argued that the trains were not in "true turnaround service" as they exceeded a radius of 50 miles (and therefore are not

properly considered Conductor only assignments). The Union's assertion on this last point appears to implicitly concede that a turnaround through freight service may be acceptable, and eligible for Conductor only service, so long as the out and back run exceeds 100 miles. My conclusion is that the proffered evidence provides some evidence of the Employer's assertion, although less than it appears on its face. I accept the Union's point that such evidence, if it is intended to be used, should be disclosed prior to the hearing, but I do not rule it totally inadmissible here.

My conclusion is that the Employer's position provides the more probable interpretation. I agree that the two person crew provisions should be read restrictively given their concessionary nature. However, I am not persuaded that "through freight service" (assuming the Article 11.7 sub-clauses are met) can only ever apply to an A to B run and not to an A to A via B run. I find no such limitation in the agreement that would apply to this factual situation. I also find persuasive the Employer's argument that it may, if it needs the additional switching, run this route in road service but I find nothing (in the absence of that extra switching) that requires it to do so. The ability to run it in road switching does not, I find, serve to exclude turnaround through freight service.

As a result, the grievance must be dismissed.

October 17, 2017

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ANDREW C.L. SIMS  
ARBITRATOR