# CANADIAN RAILWAY OFFICE OF ARBITRATION

# & DISPUTE RESOLUTION

# CASE NO. 4560

Heard in Edmonton, June 14, 2017

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Conductor Bill McDonald was ordered Belleville to Montreal on train Q106 on December 23, 2014 upon arrival at Montreal and after yarding his train Conductor McDonald was instructed to depart Taschereau Yard and take his locomotives to Southwark yard and couple onto train X321.

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

On December 23, 2014 Conductor McDonald was informed that he was required to depart Taschereau yard with his power and go to Southwark yard. Train Q106 was ordered Belleville to Taschereau yard as shown by Company records.

Conductor McDonald informed the Company that he believed this request was in violation of the Collective agreement but was instructed to "do it anyway" by a Company Officer.

Conductor McDonald complied and upon arrival at Southwark he was instructed to couple onto train X321 that was not in connection with his own train.

Conductor McDonald claimed 100 miles for extra service under Article 9.9 of the 4.16, which was declined by the Company.

It is the Union's position that the Company blatantly and indefensibly violated Articles 9.9, 7.9, 11.7, 41, 56, 61, 67, 85, 85.5 along with Addendum 123 of the 4.16 Collective Agreement.

The Union is seeking an order that the Company cease and desist from the violation of Articles 11.7 and 41 of the 4.16 Collective Agreement.

The Union submits that the Company is in violation of the 4.16 Collective Agreement and arbitral jurisprudence. The Union further submits that the Company is in violation of CIRB 315 and the May 5, 2010 CIRB mediated settlement and agreement.

The Union is seeking a significant remedy in accordance with Addendum 123 of the 4.16 Collective Agreement in this instance as the Company continues to violate the Collective Agreement.

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

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

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

There appeared on behalf of the Company:

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|---|---|
| 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:

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

## AWARD OF THE ARBITRATOR

The Company's position is that the time it took Conductor McDonald to take his locomotive from Taschereau yard to Southwark yard is something for which he was appropriately compensated under Article 7, Paragraph 9(b):

> At terminals where there are a series of yards, such as Halifax, Montreal and Toronto, when a train is ordered to go beyond the yard in which the train is usually yarded, the terminal time will be computed from the time the train reaches the designated main track switch connecting with the yard track of the yard in which the train is usually yarded, unless the crew has been advised prior to arriving and within 25 miles of the terminal that the yard of destination has been changed. The yard where the caboose is set out will be considered the yard to which the train is destined, except where there is a lap-back movement involved (such as a train from Belleville destined to Southwark setting out cars at Southwark and returning with engine and caboose to Turcot in which case, final terminal will commence from the time of reaching the outer switch at Southwark); and …

There is no dispute that Montreal has a series of yards including Taschereau and Southwark. The "extra work" for which the grievor claims 100 miles pay and for which the

Employer says is simply terminal time under 9(b), involved the work from when his train was yarded in the Taschereau yard until it was parked on track A-046 at around 6:30 p.m. at Southwark, 12 miles away. The movement involved only the locomotive consist; no cars were involved and no switching was done during this movement. The grievor claimed and received terminal pay right up until he booked off at 6:30 p.m. at Southwark. It is not disputed that the grievor was originally ordered from Belleville to Taschereau, not to Southwark.

The Employer says this is in accord with long standing practice. A locomotive consist may be parked in a yard other than a train's destination. It argues that the example used in paragraph 9(b), involving Turcot and Southwark, confirms a mutual understanding that a locomotive consist that drops off its cars in the destination yard can be directed to park at another yard within the Montreal terminal. In the Employer's submission there is no collective agreement provision allowing for the 100 mile claim advanced in this grievance. It argues that if such a payment, in addition to the terminal time both claimed and paid, was intended, it would have been expressed in the agreement.

The Union notes that, at Southwark, the train was not just parked, but coupled to train X321 which it asserts "is not in connection with his own train".

The Employer argues that there is no language in the agreement that provides any payment, beyond yard time, for setting off a locomotive consist within a series of yard.

There is no provision that entitles conductors to a 100-mile payment for taking the power to a yard other than the original destination yard within a given series of yards. The only section addressing the issue is 7.9(b)'s provision for yard time.

The Company says this interpretation is in accord with long-standing and unchallenged practice. It gives the following examples. In Halifax, train Q120 puts down the cars in the Halifax Intermodal yard and then the crew takes the locomotive consist to Ceres Container Terminal. In Toronto, conductor only trains arrive and yard the trains at Brampton Intermodal Terminal and then take their locomotive consists to MacMillan Yard. In both cases the employees get paid terminal time but not an extra 100 miles. A Montreal example was given, but it is less directly on point.

In answer to the argument that Article 7.9(b) applies, the Union asserts that "the train was not ordered beyond Taschereau; rather, the train was ordered to Taschereau, set off, and the Conductor subsequently ordered to transfer the locomotive consist to Southwark;" something not contemplated by 7.9(b). This is not a "lap-back" of the kind used in the example. The lap back situation arises where the train is required to operate past the destination yard in order to set out the train and then to come back to the destination yard with the locomotive consist, only to park. It views the movement of locomotives between yards within the terminal as "transfer work" within the exclusive jurisdiction of the Yard Service employees.

Agreement terms like Article 7.9(b) are not to be interpreted in isolation, but in the context of the entire agreement. The Union argues that other Articles assist in determining its meaning. First, it points to the provision defining and protecting yard service work.

> Yard Service Employees' Work Defined
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> 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.

Montreal terminal employs yard service employees. There is no dispute the grievor could, under this section, put his trains away on two tracks at Taschereau. The issue is what then happens to the locomotive consist, as part of "putting their own train away". Do they book off, spot the locomotive consist whenever they are told in the Taschereau yard, or wherever they are told within the Montreal terminal? The Company's position is the latter; that the Company can direct the crew to put the locomotive consist away anywhere in the Montreal terminal, providing "it pays terminal pay until the crew books off". There was no extra switching, hauling cars or other work done.

The Union also maintains that the Company's position violates the negotiated rules governing conductor only two-person crews. It relies upon Article 11.7, particularly subsection (d):

> 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:
>
> …
>
> (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.

The Company does not rely on the to "meet the requirements of service" provision which has been narrowly construed. It says instead that it is not switching at all.

The Union initially relied as well on Article 9.9 but withdrew this at the hearing.

The Union relies on **CROA 3043** where Arbitrator Picher upheld a claim by road service employees for switching in the yard. He said, of Article 41:

> It is well established that this article has been incorporated into the collective agreement in order to clearly specify the work reserved exclusively for yard service employees. Road service employees are forbidden from performing switching tasks within the switching limits determined for a given location. The exception to this rule allows a road service crew to perform on the "switching required in connection with their own train and putting their own train away…"

and in conclusion:

> "… the practice whereby the Company requires that road service employees pick up or set off cars within the Montreal switching limits, as described in this award, constitutes a violation of article 41.1 of the collective agreement."

In that case, the crew had been required to switch cars between yards. In **CROA 3182** the crew had been required to transfer cars between Montreal yards, and it was again found to conflict with the agreement.

These and other cases involving violation of Article 41 led to a series of proceedings and a protocol involving increasing penalties per violation. In the course of these proceedings Arbitrator Picher ruled on further alleged violations; in Ad Hoc 556, 557 and 560. While a violation was found in each case, none of the cases decided or referred to involved just taking the motive unit, without more, to another yard.

In Ad Hoc 556 the facts were that "on arrival at Sarnia was instructed to perform his set-off and then lift 23 cars from Track A016. After coupling such cars to their train the crew was then required to transfer the combined traffic to Port Huron" (*emphasis added*). In Ad Hoc 557 the work was "to lift 38 cars from A019 and double such cars on to track A005 (and then) pull the entire track (cars to the South service to Hobson)".

Ad Hoc 560 involves a very detailed review of the issues involved in such matters when a two person crew is involved, and when yard crew work is to be protected. As a means of addressing the entire issue, Arbitrator Picher reviewed a series of questions posed by the Union, and a variety of different but representative fact situations to

determine what was prohibited two person crew work or an encroachment on protected yard work. Not one of those questions or fact situations concerns what happens to the motive unit, under the control of the two person crew, once its cars are all unloaded. Putting their train away must include parking the motive unit somewhere. The case deal clearly with the fact it can't be used for marshalling or switching work involving cars unrelated to the original train. None of those examples address the motive unit only question. It is not clear to me after reviewing all these examples, that moving the motive units, without more, to a separate yard within the terminal, involves switching at all. If it is a transfer it is still in respect to their own train, as it would be if they simply took it to a shop in Taschereau.

In 2005, the Union obtained ruling on an unfair labour practice complaint from the Canada Industrial Relations Board. As part of the Board remedy, it ordered the Employer to train its managers in the proper application of Article 41. The Union refers me to an extract from the PowerPoint training materials created in response to this order, one of which says, at slide 24, as one of a series of examples of what would breach Article 41:

> Requiring Road Service crews, except Road Switcher crews, on any freight or locomotive consists to bring cars or locomotives from one point inside switching limits to any other location inside those switching limits for any other train or yard assignment would be a violation of Article 41.1. This rule would apply no matter if the train was outbound or inbound.

The slide then asks "Avoidable?" and answers:

> "Yes, in this particular scenario the work of transferring cars exclusively belongs to the yard employees."

The reference "to bring cars or locomotives" does appear to address the issue here, assuming locomotive includes the locomotive in one's own train. That assumes that moving one's own locomotive is not part of putting away one's own train. The reference only to cars in the answer adds a little ambiguity. The scenario in slide 28 clarifies this somewhat because it involves inappropriately being required to pick up an extra diesel unit and bring it into the shop. The slide explains this as a violation by saying "the two units are not required for traction effect or engine power for the train."

A review of the entire presentation discloses no specific reference to what the road crew can be required to do in putting away their own motive units, except where they are, in the course of that activity, instructed to pick up or drop off other rolling stock not part of their train as it arrived in the yard.

**CROA 4425** occurred after this CIRB ordered training. That case too involved an order to pick up and move cars within the yard.

> Conductor Hubley was instructed to yard his train in Halifax's Rockingham Yard in the following manner: pull into RH15, set cars out to RH10 and then set cars out to RH11. Conductor Hubley was then required to pick up cars from RH10 and take them to RG10 at Rockingham Yard.

The decision was that this did not meet "the requirements of service" test. The Union says this is nonetheless directly on point here because "the work assigned to Mr. McDonald was entirely within the recognized switching limits, and was designed to ready another train for future movement out of the yard.

Based on the above, I find that what was required of Conductor McDonald falls within the contemplation of Article 7.9(b) and does not encroach on the work of yard employees under Article 4.12. All the work was in respect of the grievor's own locomotive power. There was no picking up or dropping off of other cars or locomotives, just the direction to set off their own locomotives at an eligible yard within the terminal. I do not see that aligning with and coupling to train X321 makes a difference to the basic analysis. There was no additional switching involved, unlike all the Article 4.12 cases cited by the Union.

I find I must therefore dismiss the grievance and find that the claim for terminal time represented the contractually appropriate compensation.

As I find no breach of the collective agreement, the Addendum 123 remedy sought has no application.

September 6, 2017

ANDREW C. L. SIMS
ARBITRATOR