

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4561**

Heard in Edmonton, June 14, 2017

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE (UNION):**

Conductor April Ahlborn was required to switch cars on her train at the initial terminal of Montreal for the placement of the distributed power (locomotive) as per the Company's instructions on December 6, 2014.

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

On December 6, 2014 Conductor A. Ahlborn was employed on train M377 ordered Montreal to Belleville. When she arrived for duty Conductor Ahlborn was informed that she would be required to switch cars in order to place the distributed power on her train in a location desired by the Company.

Conductor Ahlborn set out locomotive CN 8899 on the lead and then picked up 36 cars from RU01 and then picked up the locomotive CN 8899 that she had previously set out on the lead and then coupled back onto RU01. Conductor Ahlborn was then required to double RU01 to RU04 to complete her train for departure.

It is the Union's position that the Company blatantly and indefensibly violated Articles 2.16, 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**

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**

A train ran from Montreal to Belleville. It ran with a Locomotive Engineer and a Conductor. A thorough freight service like this can operate without an Assistant Conductor (called a “reduced crew consist”), but only subject to conditions set out in Article 11.7.

The train ran with a Distributed Power Unit, a radio controlled motive unit located somewhere down the line of cars, controlled remotely from the lead locomotive at the head end of the train. The advantages of using DP units in this way include the ability to run longer trains, a distribution of power within the length of the train, reduced stress on the knuckles joining each car to the next and enhanced breaking power. There are few rules governing if and when such DP units can be used, and they can only be used when the lead locomotive is equipped with the DP control technology. Much of the collective agreement was negotiated prior to the widespread use of DP units.

There are rules about what is done in the yards to assemble trains, primarily by yard crews. They make up the trains, or disassemble them after they reach their destination. This, in contrast to the work that is done by the train's 2 or 3 person road crews. As a basic proposition, the yard crews switch the rail cars that will make up the trains and locate them in two tracks to await departure. Two tracks are usually necessary only because the normal train length exceeds the capacity of a single storage track.

Article 41.1 defines what the yard service employees are to do in such situations and what the road service crews can do. There was a yard crew available in Montreal on the day in question.

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.

Thus, the road service crew can connect their locomotives to the first line of cars, pull ahead and, after switching, back up to connect to the second line of cars to complete their trains so they can leave. At the other end of the trip they can reverse the process, backing the back end cars into the first storage track, disconnect, pulling ahead and, after

switching back the remainder of the cars into the second storage track before disconnecting their locomotives and putting them away.

CN operated this train without an Assistant Conductor, so the conditions for doing so set out the following list applied:

11.7 Notwithstanding the provisions of paragraph 11.4, trains operating in through freight service may be operated without a conductor but without an assistant conductor provided that:

- (a) Such trains are operated without a caboose;
- (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.

Using a DP unit adds a complication to this otherwise relatively straightforward division of responsibility between the yard crew and the road crew. The question is how, or more significantly by which crew, are the DP units to be positioned at some designated spot within the rail cars before the train leaves the terminal and, on arrival, how is that unit extracted from the cars while the train is being put on the storage tracks. The Union maintains this involves extra switching work for the locomotive engineer on the road crew.

Faced with these new circumstances, the Company sought and the Union agreed, in March 2012, to a specific agreement that covers the issue at the destination terminal. This grievance would not have arisen if the parties had negotiated a similar agreement for the originating terminal, although there are reasons given why one was easier to negotiate than the other.

The destination (or final) terminal agreement provided, in respect of DP units:

Yarding a Train at the Final Terminal with DP power:

Final terminal – receiving tracks are all 5000' in length;

Example 1 – An 8000' train is instructed to yard in track 01, make a designated cut at the DP unit and double to track 02, return to track 01 couple to DP unit, power to shop.

**Union and Company Agree:** Crew would be entitled to final terminal payment, a DC payment, & payment for picking up a unit (LC), based on assumption that more cars could have fit in track 01.

Example 2 – An 8000' train is instructed to make a designated cut at the DP unit, and pull the headend portion into track 01, return to train couple to DP unit and yard the tailend portion in track 02, power to shop

**Union and Company Agree:** Crew would be entitled to final terminal payment & a DC payment, & payment for picking up a unit LC as the crew was directed at what car to make the cut.

Example 3 – An 8000' train is instructed to pull into track 01 and make a designated cut behind the 24<sup>th</sup> car and place the cut of cars in track 02, return to train in track 01 and make a designated cut at the DP unit and place the cut of cars to track 03, return to track 01 and pick up the DP power, power to shop.

**Union and Company Agree:** Crew would be entitled to final terminal payment & a DC payment, & payment for picking up a unit (LC) as the crew was directed at what car to make the cut.

The relative position of a DP unit in a train can change over the course of a journey as cars are picked up or dropped off at intermediate locations. However, when the train arrives at its destination, the DP unit can be extracted from the train by cutting the train so as to leave the DP unit on the storage track with all the cars behind it, so that, once the balance of the rail cars are positioned on the second track, the head locomotive(s) can return and simply couple up with the DP unit.

The Union asserts that the reason an initial terminal agreement could not be reached, while a destination agreement was, is because of the amount of switching involved in inserting the DP unit into the train consist at the appropriate location. In the Union's view, then and now, to have the road service crew do this would violate the yard crews scope of work in Article 41.1 and, if a two person road crew is used, the condition in Article 11.7(b).

The DP unit involved here was CN 8899. The lead locomotive was CN 2300 coupled throughout to BNSF6612. What happened in this case is that the two person road crew, with the grievor as conductor, took three connected diesel units from the shop track, the back unit being destined to be the DP unit. They dropped off the DP unit on the lead track, and then pulled ahead, backing up to connect the first 36 cars in the first storage track. They pulled ahead again and backed up to pick-up the DP unit, pulled ahead again and backed up for a second time into the first storage track to pick up ("lift")

the remaining cars on that track. The trains then pulled ahead to allow it to back up and pick up the cars in the second storage yard, thus completing the train.

The Union's says that the Employer directions go beyond what Article 11.7 allows for a reduced crew consist, and impinges on the yard crew's responsibilities. Essentially it is saying that the yard crew should have picked up CN 8899 and positioned it after the first 36 cars in storage track 1. The nub of the difference between the parties is this. The Employer says:

[it] maintains the position that this (now) mid-train locomotive (CN 8899 – the DP Unit) continued to be part of the crew's three-locomotive consist.

The Union says, in contrast:

A locomotive consist is defined ... at Article 2.15 as "The term" unit (or units)" refers to a unit which is coupled in the locomotive consist and is in charge of the Locomotive Engineer who is assisted by the Conductor making a claim under this paragraph". It is not possible for CN 8899 to be part of the locomotive consist as it is not coupled to the lead locomotive.

Put another way, the Union says, if the DP unit is not coupled to the lead locomotive(s) and therefore not providing power, then it is nothing more than a box car for the purposes of the agreement. What the grievor was asked to do here was disassemble the otherwise run ready train, in order to insert this "box car like DP unit", into that train. This involves switching work which is (a) yard crew work under Article 41.1 or (b) if allowed, which the Union says it is not, it would require the addition of an Assistant Conductor to the road crew because of the limitation in Article 11(7).

The Company argues that inserting a DP unit in the middle of the train is not “switching”. Rather it says, it is something contemplated by and paid for under Article 2.14:

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 – (currently \$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 (currently \$17.52)

The Union maintains this must be read along with 2.15 which reads:

2.15 The term “unit (or units)” refers to a unit which is coupled in the locomotive consist and is in charge of the Locomotive Engineer who is assisted by the Conductor making a claim under this paragraph.

It is this provision that it says supports its position that, once uncoupled from the lead locomotive(s), the DP unit ceases to be part of “their locomotive consist” at least until reconnected so as to be once again in charge of the Locomotive Engineer.

The Company urges a purposive interpretation of these Article 2 provisions. Originally the payment only applied to Locomotive Engineers and to their locomotive consists. It did not cover handling diesel units being moved but not part of their locomotive consist. The payment was then extended to the Conductor who assisted the Locomotive Engineer. Article 2.14 and 2.15 were introduced in 1995 before DP technology. It argues



that "... the reference to 'coupled' is a reflection of how a traditional locomotive consist was operated at the time". The purpose of the payment was to give the Conductor a similar Article 2.14 benefit to that which the Locomotive Engineer receives under their agreement. In the Employer's view, "providing the diesel unit forms part of the locomotive consist, where it is located is immaterial. The Union replies however that the Locomotive Engineer agreement has no Article 41 protecting yard switchers' work, and while the Engineer stays on the train, the Conductor is on the ground doing what it views as switching work.

The Union argues that the work of positioning an unconnected DP unit within a train consist is yard work. The agreement allows two exceptions for a two person crew. The first is in 11.7(b) which provides an exception to the basic rule for doubling necessary to assemble the trains because the storage tracks are too short to hold the fully assembled train, which is not the case here. The train was fully assembled and ready to run except for positioning the DP unit, something that could have been done before. The second is under 11.7(d) which contemplate switching in "conjunction with their own train ... to meet the requirements of the service". The Union relies on Ad Hoc 606 where Arbitrator Picher said:

It is well settled that the concept of "the requirements of the service" is not the equivalent of the arrangement which would best suit the convenience or efficiency of the Company. While customer service might have a bearing, it is generally external factors, such as safety regulations or operating rules which are intended to be caught by the phrase "the requirements of the service".

He similarly ruled, in Ad Hoc 583

The Company submits that that instruction was permissible as it constituted switching at the final terminal “to meet the requirements of the service” as contemplated within article 15.2(b)(iv).

With respect, the Arbitrator cannot agree. To interpret the words as the Company would have it would, I think, be tantamount to stating that conductor-only road crews can be compelled to perform yard work whenever it is more efficient for them to do so from the standpoint of customer service. That is clearly not the tenor of the language of article 15. In the Arbitrator’s view, the requirement to separately set off cars at the intermodal facility, albeit in one track if a single track will accommodate them, is manifestly in keeping with meeting the requirements of the service as contemplated within subparagraph (iv). However, the separate breaking up and marshalling of cars to separate positions on the intermodal pads is of a different order of work, going beyond the requirements of the service to what is in effect the undue performance of yard work in dismantling a train, beyond the contemplation of the Conductor-Only Agreement.

The bracketed “set off a bad order car” exception is not relevant.

The Company cites **CROA&DR 4458** in support of its position. In turn, the Union says the Company argued a contrary position to the one it takes now in that case. I do not find the case helpful because, while physically disconnected from the lead locomotive, the DP unit here was still part of the same train whereas in **CROA&DR 4458** the locomotive was positioned for a different train. **CROA&DR 203** is more directly on point, but preceded Article 41.1. It involved picking up a motive unit and moving it, as part of a train, but without its providing power while being so moved. The Arbitrator said “... they simply picked up a car at a station enroute. In my view, it would make no difference if unit 3878 had been a box car rather than a diesel unit”. Again, however, that unit never

did provide motive power for the train. Here, the DP unit begins as part of the locomotive consist and, once position and reconnected, provided motive power for the run.

Having considered these arguments, my conclusion is that the Union's interpretation is the more probable. There is an inherent difficulty in applying terms, negotiated without reference or even the contemplation of DP units, to the agreement's terms. The Company points to the 2012 agreement, saying the Union's arguments for the originating terminal are inconsistent with what it has agreed to for the distribution terminals. This argument is not convincing precisely because it is an agreement written to address and compromise on the type of issue raised now over originating terminals.

The work involved in cutting the cars on an already assembled train to insert a DP unit at a designated place within the rail cars is switching work, presumptively under Article 41.1, to be handled by the yard crews so that the road crew arrives to find a train ready to leave the initial terminal except for the need to double on account of the insufficient length of the storage tracks. I do not find this provision displaced by payments under Article 2.14 and 2.15. The better interpretation is that they apply, as the Article 2.15 definition suggests, while coupled in the locomotive consist. This is also consistent with the provisions of Article 11.7(b) and (d), and the Union's assertion that minimizing switching at the initial and destination terminals was an integral part of the agreement to allow a two person road crew. The argument that neither (b) or (d) refer to diesel units is not persuasive; the absence of such a reference does not imply permission, or an exception for diesel units, to the presumptive assignment of switching work to yard crews.

The case law providing a limited scope of “requirements of service” support the Union’s position.

It is therefore declared that the work assigned to the grievor, after she set off CN 8899 and before the train left, was yard work within the meaning of Article 41.1 and was not excluded by Article 2.14 duties or by the exception allowed in Article 41.1 due to the requirements of service or by Article 11.7. The Employer is directed to cease and desist such assignments in similar circumstances. Compensation adjustments are left to the parties, with remedial jurisdiction reserved if agreement cannot be reached.

The Union initially made allegations under Articles 2.16, 56, 61, 85 and 85.5 and sought a remedy under Addendum 123. It decided at the hearing not to pursue such matters.

August 3, 2017



---

ANDREW C. L. SIMS  
ARBITRATOR