CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4683

Heard in Calgary, May 14, 2019

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company violation of including, but not limited to, Article 2.2, 6.4(c), 6.5, 7, 11, 12.6, 27, 37, 40, 41, 56, 61, 85, 85.5, Addendum 31 and 123 of the 4.16 Collective Agreement and CROA 3043 and AH 557 when the Company instructed Conductor K. Rooley in "Continuous Rescue Service".

THE UNION'S EXPARTE STATEMENT OF ISSUE:

The Company, on January 30, 2015 ordered Mr. Rooley Conductor Only in "Continuous Rescue" service from the Toronto North Road Spareboard.

Mr. Rooley was first directed to taxi from Mac Yard to get Train M31641 27 at Langstaff.

Mr. Rooley established a final outer switch time of 0314 consistent with the provisions of Article 7.8 passing the timer coming into Mac Yard on Train M31641 27. He proceeded to yard the train, took the power to the shop completing his tour of duty. He was told by the Chief RTC to "stand by" to possibly rescue Train 121.

The Chief RTC contacted Mr. Rooley a short time later and directed him to go to Goreway, Mile 7 Halton Sub, to get Train Q12111 28 to take into BIT and Yard the 5935 foot train in 4 tracks.

The Union requests as relief: 1) a declaration that the Company has violated the Agreement as alleged, 2) An order that the Company cease and desist from violating Articles 2.2, 6, 7, 11, 12, 27, 41, 56, 61, 85, 85.5, of the 4.16 Collective Agreement 3) an order that the Company complies with Articles 2.2 6, 7, 11, 12, 27, 41, 56, 61, 85, 85.5 of the 4.16 Collective Agreement.

The Union's Position

The Union submits that the Company blatantly and indefensibly violated Articles 2.2, 6, 7, 11, 12, 27, 41, 56, 61, 85, 85.5, Addendum 31 and 123 of the 4.16 Collective Agreement of and seeks that a cease and desist directive be issued.

The Union further submits that the Company in this instance has violated arbitral jurisprudence including but not limited to CROA 3462 and AH 557.

The Union further seeks a substantial remedy under addendum 123 of the 4.16 Collective Agreement for the blatant, indefensible and repeated violations of the Collective Agreement.

The Company's Position

The Company disagrees and denies the Union's request.

FOR THE UNION: **FOR THE COMPANY:**

(SGD.) J. Robbins **(SGD.)**
General Chairperson

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
K. Morris	– Senior Manager, Labour Relations, Edmonton

And 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 is a work jurisdiction case. The grievor reported to the Macmillan Yard at 0130h, where he started his tour of duty. He was later told to taxi to mile 18.3 (Langstaff) on the Bala subdivision where he was assigned to train M31641 27 ("M31"). The grievor and his locomotive engineer were relieving a road crew which failed to make it to their destination at the Macmillan Yard.

The grievor and his locomotive engineer, as instructed, took the train into the MacMillan Yard, passing the outer switch at 0314h. They completed the yarding of the train and took the power to the shop. The grievor was then instructed by the RTC Chief to stand by to potentially rescue train Q12111 28 ("Q121").

At 0600h, the grievor was instructed by his RTC Chief to taxi from the bullpen at the Macmillan Yard to mile 8.8 (Goreway) on the Halton subdivision. Goreway is within the switching limits for the Toronto terminal. The grievor and his locomotive engineer were assigned to take control of Q121 and operate it to Brampton Intermodal Yard ("BIT"). Q121 passed the outer switch at 0840h and the griever once again yarded all the rail cars at BIT. The journal for Q128 confirms that the train was more than 2 miles in length (11,528 feet) which required it to be yarded into four different tracks.

The grievor was released from duty at 1135h, claiming 8 hrs and 23 minutes of final time, equal to an additional $123.94. The Company declined the grievor's claim and provided him with an adjusted ticket to coincide with his final terminal time when he passed the outer switch with train Q128; that is, his final terminal time was adjusted from the amount he claimed of 8 hours and 23 minutes to 3 hours and 3 minutes.

Numerous collective agreement provisions were cited, including the following:

> **Article 6 – Basic Day**
> 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 turn around 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.

Article 11 – Consist of Crews

Freight Service

11.4 Except as otherwise provided herein, all freight, work and mixed trains will have a conductor and one assistant conductor. On mixed trains, the assistant conductor may be used to handle baggage, mail and/or express.

Note: Where presently used in Agreement 4.16, the term "reduced freight crew consist" shall hereafter refer to a crew consist of one conductor and one assistant conductor.

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:

(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 of 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;

Note: (This Note: is only applicable to the First Seniority District). For the purposes of clarity, the taking on or setting out of cars at a yard (other than the yard in which the train originates or terminates) at terminals where there are a series of yards (such as Halifax and Montreal) will not count as a stop in the application of sub-paragraph:11.7(e) However, the payment set out in paragraph 2.5 will be payable when cars are taken on or set out at such yards in a conductor-only operation.

(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 , 34 to comply with the requirements of rules and special instructions governing the marshalling of trains;

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 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.

41.2 At points where yard service employees are employed and a spare list of yard service employees or a joint spare list from which yard service employees are drawn is maintained, yard service employees if available, will handle work, wreck, construction, snow plow and flanging service other than that performed continuous with a road trip in such service, and be paid at yard rates and under yard conditions.

The Union submits that this grievance is about the Company trying to use a Conductor Only crew to perform the work of a Yard Service crew. The Union submits that article 41.1 provides that all switching, transfer and industrial work within a terminal's switching limits is considered Yard Service employees' work. The exception is when Road Service employees, like the grievor, put their own train away on a minimum number of tracks at the end of a tour. The Union notes the comments of Arbitrator Picher in **CROA 3182** where he states that article 41.1 prevents the assignment of work within closed yards to road crews. The Union also notes that there is no mention of turnaround service, as set out in article 6.4, in the July 1991 *Conductor Only Memorandum of Agreement* ("MOA"*)*; the MOA is expressly limited to "through freight service". The reasons set out in the CROA case law support the

argument that “turnaround service” and “through freight service” are two distinct services under the 4.16 Collective Agreement.

The Company submits that article 6.4 was negotiated with the intent of having an unassigned freight crew perform one of more turnaround trips out of the same terminal. The Company argues that it had the right to have the grievor recrew and yard two separate trains that had previously failed to make it to the final terminal on January 30, 2015. The Company complied with article 6.4 given that: the turning point did not exceed 30 miles for either train; the cumulative mileage did not exceed 120 miles; and, the grievor was not required to start a succeeding trip after being on duty for 8 hours.

The Company further maintains that the grievor was only entitled to terminal time when inside the terminal limits; and, road mileage from the outer switch to the turnaround point and back when leaving the terminal limits. In this case, the grievor was properly compensated for work performed both inside and outside the Toronto terminal when recrewing for the first trip with train M31on the Bala Sub. Contrary to what the Union argues, the Company submits that the grievor’s tour of duty was not completed after the Bala Sub but only after he completed recrewing the second train on the Halton Sub.

The Company further submits that the tasks completed by the grievor in recrewing the second train do not fall within the definition of Yard Service employee work as set out in article 41.1. The Company maintains in that regard that the work

performed by the grievor to recrew Q121 cannot be defined as *"switching, transfer or industrial work"* and is therefore not work that is exclusive to Yard Service employees. The Company also notes that yarding the second train at the final terminal was legitimate work assigned for Conductor Only road crews, as set out in article 11.7. The Company submits that it would take clear and unequivocal language to support the Union's submission that any work performed wholly within switching limits belongs to Yard Service employees or road switcher crews.

The arbitrator notes that the starting point is the generally accepted principle of arbitration, and indeed contract law, that a collective agreement must be read in its entirety with the language to be interpreted according to the intentions of the parties. To quote one author: *"The words which the parties have used..., being ordinary words of the English language, must be construed in their ordinary and natural meaning unless the context otherwise requires."*[1]

There is no dispute that the grievor was asked to take control of train M31 in order to relieve a Road Service crew that failed to make their destination. Train M31 had a crew consist of Conductor Only, meaning just the grievor in this case as the conductor accompanied by a Locomotive Engineer. This was an assignment that fell squarely within the Conductor Only requirements set out in article 11.7. Article 11.7 specifically states in the introductory paragraph that trains can be operated with a conductor, and not an accompanying assistant conductor, if it is a train *"operating in*

[1] See Lewison, *Interpretation of Contracts* (Sweet & Maxwell) at p.4.01

through freight service". The term *"through freight"* is the first term where the ordinary meaning rule should apply. The word "through" in my view, plainly contemplates a beginning point and an end point- that is an "initial" or "final" terminal, as set out in article 11.7(d).

The "hook and go trains", for example, fall within the meaning of *"through freight"* as they typically travel on the mainline from one terminal to the other. The only exception is found at article 11.7(d) *"…if switching in connection with their own train is required at the initial or final terminal to meet the requirements of the service."* Again, the provision speaks to the conductor's "own" train which contemplates a single assignment. A further condition set out in article 11.7(d) is that the switching must be necessary *"to meet the requirements of the service."* As Arbitrator Picher noted in AH-560 [cited in Wood J.'s judicial review decision of **CROA 4425**]:

> The foregoing article clearly contemplates situations in which conductor only crews are required to perform switching at initial or final terminals. Firstly, it is paramount that such switching must be "in connection with their own train". They are not to perform switching intended for the purposes of another train or yard movement. Secondly, such switching must be necessary "to meet the requirements" of the service, subject to the exceptions expressly enumerated with respect to bad order cars.

With respect to the submission of the Company regarding the applicability of article 4.16, just because the grievor simply duplicated the work that the inbound Conductor Only crew would have performed does not detract from the fact that a two-mile long train had to be yarded into 4 different tracks. That type of work in my view satisfied the definition of *"switching, transfer or industrial work"* and should have been

assigned to a Yard Service crew. In any event, I note the comments found in the decision of Justice Wood at para 30 that the rights set out in 11.7 supersedes those found article 41.1 in cases involving a Conductor Only crews.

In light of the language of Article 11.7 (d) the interpretation of what is meant by the requirements of the service is central to this judicial review. The provision specifically applies to conductor only trains and, by its terms, supersedes the general provisions of Article 41.1

The second rescue trip inside the switching limits should therefore have been performed by the Yard Service or switcher crews and not by a Conductor Only crew. As the grievor noted, he was on his final terminal time once he completed the first trip at 3:14 and yarded M31. The Company has failed to comply with the requirements of article 11.7 when it called a crew consist of Conductor Only to yard train Q121.

I would add that I also disagree with the Company that turnaround service is included in “through freight” service. I accept the Union’s position that it would be inconsistent with the Conductor Only assignment to have such a smaller crew deal with the turnaround service contemplated in article 6.4. Had the parties intended to include turnaround service of a kind performed by the grievor during his second trip, it would have specifically included that language in article 11.7. I am reinforced in that view given that I accept that the purpose of the 1991 MOA was to limit Conductor Only Service to “through freight service”.

The grievance is upheld. I find a breach of the Collective Agreement and order that the grievor be made monetarily whole. I will remain seized should the parties be unable to come to an agreement as to the amount owing to the grievor.

May 28, 2019

JOHN M. MOREAU, Q.C.

ARBITRATOR