

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

CASE NO. 4876

Heard in Montreal, October 18, 2023

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Policy Grievance on behalf of all Conductors in Western Canada and specifically, Traffic Coordinator L. Greengrass (167084) of Vancouver, BC who was forced to leave his office and perform Conductors work at Vancouver Main Yard, in violation of Addendum 24 and Article 2 of the Agreement 4.2.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On February 10, 2018, Traffic Coordinator Greengrass (the Grievor) worked his regular 1430 Main Yard Traffic Coordinator position, assignment YMY30. During his tour of duty, Trainmaster A. Koppa instructed the Grievor to perform specific Conductor work and assist train Q11131-06. That work included making a designated cut (DC) and manually protect the balance of the train in track MF40 while the Conductor performed his set out.

It is the Unions position that there are no provisions contained within Agreement 4.2 that would allow the use of Traffic Coordinators outside the scope of their regular duties. However, the one exception to the aforementioned is in Central Region, where a signed understanding has allowed the Company to deviate from the traditional definition of Article 2, allowing Traffic Coordinators to perform certain and specific bargaining work belonging to employees governed by Agreement 4.16. With the inclusion of "Mobile Yardmasters" in the Central Region it is, with prejudice, the exclusion to all other locations and employees governed by Agreement 4.3.

Furthermore, the Company has previously and historically defined the duties of a Traffic Coordinator to include the planning, organizing and manage yard operations, plan day-to-day crew assignments, organize work schedules and re-adjust for unplanned traffic, direct freight switching and monitor delayed traffic, switching progress, proper handling and marshalling of dangerous cars, and input the movement of cars in the yard into the Company's computer system.

The Union requests a cease-and-desist order be issued compelling the Company to not utilize Traffic Coordinators outside the proper scope of Agreement 4.2 unless mutually agreed. Due the blatant and indefensible violation the Union also requests a remedy payment be

afforded to like grievances in as a whole, and the employee most available under Agreement 4.3 be made whole for all earnings lost.

It is the Company's position that Addendum 24 (Work Jurisdiction) and Article 2.3 (Scope) allows for Traffic Coordinators perform the work described. Furthermore, CROA 3595 dictates that it is an employers right to assign work, a right that can only be restricted by explicit language in a collective agreement.

The Company maintains that no such language exists in either Agreement 4.2 or Agreement 4.3 that would prohibit a Traffic Coordinator from performing incidental work that they are qualified to perform such as pulling a pin, closing an angle cock and/or lining a switch to assist a train crew as Traffic Coordinator Riel did in this case.

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

General Chairperson, CTY-W

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- | | |
|--------------|---|
| A. Borges | – Manager Labour Relations, Toronto |
| F. Daignault | – Director, Labour Relations, Montreal |
| J. El Shamey | – Senior Labour Relations Manager, Montreal |
| S. Matthews | – Manager, Labour Relations, Toronto |
| R. Singh | – Manager, Labour Relations, Edmonton |
| D. Jenson | – Transportation Manager, Vancouver |

And on behalf of the Union:

- | | |
|-----------------|---|
| D. Ellickson | – Counsel, Caley Wray, Toronto |
| J. Lennie | – General Chairperson, CTY-C, Hamilton |
| G. Gower | – Vice General Chairperson, CTY-C, Brockville |
| E. Page | – Vice General Chairperson, Burlington |
| R. Donegan | – General Chairperson, CTY-W, Saskatoon |
| J. Thorbjornsen | – Vice General Chairperson, CTY-W, Saskatoon |
| M. Anderson | – Vice General Chairperson, LE-W, Edmonton |
| P. Boucher | – TCRC National President, Ottawa |
| R. Finnson | – Vice President, TCRC, Ottawa |

AWARD OF THE ARBITRATOR

Context

1. This matter concerns work that Traffic Coordinator Greengrass was asked to perform in 2018, for a period of some 20 minutes. He was asked to perform work in the Vancouver Yard which would normally be performed by a Conductor. While the contested work involved is minimal, the issue is important to both parties, as it deals

with work jurisdiction between Traffic Coordinators and Conductors and the ability of the Company to assign work.

Union Position

2. The Union argues that the work TC Greengrass was asked to perform was work which is done by Conductors. Traffic Coordinators and Conductors are governed by separate collective agreements, Agreements 4.2 and 4.3 respectively, although represented by the same bargaining agent.

3. The Union notes that the work performed by TCs and Conductors is defined by the Company quite differently:

Traffic Coordinator work has been defined by CN as "Traffic Coordinators plan, organize and manage yard operations. They plan day-to-day crew assignments, organize work schedules and re-adjust schedules for unplanned traffic. They direct freight switching operations and monitor delayed traffic, switching progress, the proper handling and marshalling of dangerous commodities, etc. They input any movement of cars in the yard into our computerized tracking system."

4. Conductor work has been defined by CN as "Conductors switch rail cars, make or split up trains in yards, move cars between yards, sidings or tracks (often using a remote control device called a belt pack), according to instructions originating with yard and train planners."

5. The Union argues that there are substantial differences between the two crafts, with the TC working inside, while the Conductor works outside, physically working with the trains. It submits that the TC is usually, but not always, also trained as a Conductor. It submits that while the individual employee may be qualified as both a TC and a Conductor, and indeed accumulate seniority on both lists, but when called in, is designated as one or the other.

6. It argues that there has never been the ability to cross these craft lines, absent a Local Agreement between the parties, which does exist, but not for the Vancouver Yard.
7. It argues that the CCROU agreement, invoked by the Company, does not deal with this between craft issue, but rather was intended to protect work done by members represented by CCROU against other employees.
8. The Union seeks a cease and desist order, together with a make whole remedy for both TC Greengrass and Conductors who will have lost work.

Company Position

9. The Company argues that as part of career progression, Conductors become Traffic Coordinators and/or Locomotive Engineers and that TCs are all trained Conductors.
10. It argues that there is no language in Collective Agreement 4.2 which prevents the assignment of incidental work to TCs which they are qualified to perform. It relies on **CROA 3595** and **3350** with respect to the requirement of clear and precise collective agreement language to oust an important managerial right to assign work.
11. It submits that not only is there no collective agreement language preventing the Company from assigning this work, Addendum 24 of Agreement 4.2 actually permits the assignment of work to CCROU (the predecessor Union to the current bargaining agent) members.
12. It notes that the work issue invoked by TC Greengrass is not a common issue, as it has only resulted in three grievances in a 6 year period.
13. Lastly, it argues that a cease and desist order is inappropriate in the circumstances and that no financial losses were suffered by TC Greengrass. It argues

that the claim on behalf of Conductors is inappropriately filed, as the grievance steps were not respected.

Analysis and Decision

14. Work jurisdiction is an important issue for both parties. It represents job security to union members and hence is jealously protected. For the Company, it represents a barrier to the most efficient method of running the railroad, which efficiency is ultimately to the benefit of both shareholders and employees.

15. Work jurisdiction has been the subject of decisions from arbitrators and Labour Boards:

- a) Disputes concerning work given to management employees (see 2015 CIRB 755);
- b) Disputes concerning work given between different craft unions;
- c) Disputes concerning work given to different geographically based unions performing the same tasks (see Ad Hoc 609);
- d) Disputes between members of the same craft union, performing the same tasks in different geographical areas (see CROA 3502).

16. The cases all reflect an examination of the appropriate legislation, collective agreement language, agreements between the parties and the particular facts of the case.

17. Article 2.3 of Agreement 4.2 covers work performed by Traffic Coordinators:

2.3 Traffic Coordinators are defined as those who are directly responsible for yard operations in a certain specified territory during the hours of their assignment.

18. Article 102 of Agreement 4.3 covers work performed by yard service employees, who do not include Traffic Coordinators:

102.1 Yard service employees will do all transfer, construction, maintenance of way, and work train service exclusively within switching limits, and will be paid yard rates for such service. Switching limits to cover all transfer and industrial work in connection with terminal. This paragraph shall apply only at locations which are listed in paragraph 112.6 of Article 112. (Note: The referenced paragraph 112.6 includes Vancouver)

19. An examination of Agreement 4.2 is not determinative of the issue. The wording “directly responsible for yard operations” does not indicate whether the TC is responsible for or actually doing the operation. However, Agreement 4.3 is much more specific: “Yard service employees will do all transfer, ...and work train service exclusively within switching limits”. This agreement speaks to the actual work being performed by Yard employees. A plain reading of the two Agreements favours the Union position.

20. The Company accepts that there is no specific language in the definition or classification of Traffic Coordinator which permits them to do “incidental work” outside their work description, even if the individual is otherwise qualified to do the work.

21. The Company points, however, to Addendum 24 of Agreement 4.2, which it says permits it to assign work to CCROU represented employees. The Addendum reads as follows:

Discussions between the parties recognized the work that has normally and historically been performed by the CCROU relative to other crafts. In this regard the Company affirms that switching activities performed in CN Yards and CN facilities will be performed by the CCROU, excluding shop track facilities as defined by shop track limits. The parties recognized that this letter cannot serve to limit the rights of other crafts as contained in their respective agreements, such as the performance of duties incidental to their work. Nevertheless, the Company will assign work to the CCROU consistent with the foregoing.

22. However, the thrust and intention of the Agreement is to protect: “work that has normally and historically been performed by the CCROU relative to other crafts.” The wording, on its face, does not permit the Company to assign work as it wishes within work normally done by CCROU represented employees. I do not find that the Addendum assists in the Company in its argument that it can assign work normally performed by a Yard Worker under Agreement 4.3 to a Traffic Controller under Agreement 4.2, even if both are represented by the same bargaining agent.

23. Agreements between the parties point in favour of the Union position. Traffic Controllers who perform yard work appear to have been the subject of a Local Agreement (see Union Tab 8 with respect to mobile yardmasters in Southwark (St. Lambert). If the Company's position was accepted, it is not clear why any Local Agreement would ever be required.

24. In terms of the particular facts of this case, it does not appear contested that other Agreement 4.3 covered workers were available to perform the work assigned to the grievor. Accordingly, I find, based on a reading of the Agreements, the existence of a Local Agreement and the practice of the parties, further discussed below, that the grievor should not have been assigned the contested work.

Remedy

25. It does not appear to be contested that Mr. Greengrass suffered no loss by performing the work, as his TC rate is higher than that of a Yard Worker or Conductor.

26. It also appears that this work assignment issue is not a prevalent one, being the subject of only three grievances in the space of six years. The current situation is a limited jurisdictional dispute, in a defined area and infrequent. I agree with the Company submission that this is not the circumstance which calls out for a cease and desist order and decline to do so (see CROA 4078, AH 795 and AH 801).

27. The Union requests that I order compensation for the Conductors deprived of work by the work performed by TC Greengrass. The Company objects, based on the fact that no separate grievance was filed by the Union on behalf of Conductors. It further objects on the basis that the grievance was only filed at the third level, contrary to CROA requirements that the matter only be referred once internal processes had been exhausted (see CROA 4106, 4658 and 4659).

28. Any compensation would necessarily be limited, as it only involves some 20 minutes of missing work for the Yard Worker. However, I agree with the Company

objection that the Union has failed to exhaust the internal process. Accordingly, I decline to award compensation.

29. The grievance, however, is upheld that when the Company required TC Greengrass to perform specific Conductor work, it violated Agreement 4.2.

30. I remain seized with respect to any questions of interpretation or implementation of this Award.

November 21, 2023

A handwritten signature in black ink, appearing to read "James Cameron", written over a horizontal line.

JAMES CAMERON
ARBITRATOR