

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

CASE NO. 5012

Heard in Montreal, March 12, 2024

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union contends that the Company violated Articles 7, 11, 41, 49, 56, 61, 85 and 85.5 on September 10, 2015 when Conductor Bartlett was instructed to assemble his train from more than the minimum number of tracks at Mac Yard.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On September 10, 2015 Conductor Bartlett was ordered in Conductor Only service for train M37631 10 from Toronto's Mac Yard to Belleville.

Conductor Bartlett was required to assemble his train from more than the minimum number of tracks at the initial terminal EE05 (5250') to CO51 (6500').

Conductor Bartlett's train was 6426' in length and would have fit into CO51 in its entirety.

The Union contends this is a clear violation of arbitral jurisprudence, as Conductor Bartlett was ordered in Conductor Only Service, and he performed switching at the initial terminal while there were yard crews on duty at the time.

Union's position:

The Union asserts that the Company is in violation of Articles 7, 11, 41, 49, 56, 61, 85 and 85.5 of the 4.16 Collective Agreement. The Union further asserts that the Company is in violation of arbitral jurisprudence.

The Company is also in violation of the CIRB 315 ruling and the May 5, 2010 CIRB mediated settlement.

The Union is requesting that Conductor Bartlett be made whole for any and all lost earnings as a result of the Company's actions.

The Union is further requesting a substantial remedy under the provisions of Addendum 123 of the 4.16 Collective Agreement.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

On September 10, 2015, Conductor Bartlett was ordered in conductor-only service from Toronto to Belleville on train M37631-10 (*grievance quoted incorrect train ID as X37631-10*).

When Conductor Bartlett arrived, he was instructed to double over two tracks (EE05 and CO51) to assemble his train.

The train was a total of 6426ft including the engine.

The Union filed a grievance claiming a violation of Articles 11.7 (b) and 41 of the 4.16 Agreement, Arbitrator Picher's Cease and Desist award and CIRB decision 315.

The Company's Position:

The Company first considers the grievance to be settled as per the October 6, 2023, e-mail from the Union to the CROA Office identifying a list of grievances the Union instructed to have removed from the CROA backlog. The Union identified this case, grievance number GTS-2015-01105 as settled. Thus, the case should not be heard.

In the alternative, the work performed by the Grievor was in accordance with Article 11.7 (b) of the 4.16 Collective Agreement. In the case at hand, the Grievor's train was 6,426 feet long (including the engines) and could not hold in less than the two (2) tracks.

Insufficiency of track space has been contemplated in applicable jurisprudence (AH6060 and AH583) which indicates that the limitation to the number of tracks is to be limited only by the possible insufficiency of track length.

In the further alternative, the Company submits that the traffic came into the yard shortly before the Grievor's tour of duty began, which is a clear exception to the minimum number of tracks for a conductor only crew.

The Company takes the position that they acted in accordance with Article 11.7 (b) of the 4.16 Collective Agreement. Moreover, the Grievor was appropriately compensated for the work he performed at the initial terminal. Therefore, the Union cannot expand its grievance by seeking to have the Grievor made whole.

The Company also denies any Article 85 violation as the union did not plead any facts to support its allegation. Furthermore, the Company denies that it blatantly and in defensively violated the agreement.

FOR THE UNION:

(SGD.) J. Lennie

General Chairperson-CTY-C

FOR THE COMPANY:

(SGD.) S. Matthews

Labour Relations Manager

There appeared on behalf of the Company:

W. Hlibchuk	– Counsel, Norton Rose, Montreal
A. Borges	– Manager, Labour Relations, Toronto
S. Matthews	– Manager, Labour Relations, Toronto
G. Doyle	– Officer Hump Process Systems, Toronto
R. Smith	– Counsel, Norton Rose, Montreal
S. Fusco	– Senior Manager, Labour Relations, Edmonton
R. Signh	– Manager, Labour Relations, Vancouver
A. Hernandez-Gutierrez	– Associate, Labour Relations, Edmonton

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Lennie	– General Chairperson, CTY-C, Hamilton
G. Gower	– Vice General Chairperson, CTY-C, Brockville
E. Page	– Vice General Chairperson, Hamilton
M. Kernaghan	– General Chairperson, LE-C, Trenton
J. Bedard	– General Secretary Treasurer, Montreal

AWARD OF THE ARBITRATOR

Context

1. This matter is one of the many grievances filed following the decision to implement “Conductor only” trains. The background to this decision and the agreement as to its implementation are set out in multiple decisions (see **AH 560, AH 608, CROA 4880**).

2. The agreement notes that conductors operating “Conductor only” trains are to do “hook and haul”, subject to a limited number of exceptions. One of the exceptions is that there can be doubling over, when the available tracks are insufficiently long to accommodate the train. In this case, the minimum number of tracks are to be used:

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.

...

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 or lift a bad order car or cars after being repaired), the conductor will be entitled to a payment of 12 1/2 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, to comply with the requirements of rules and special instructions governing the marshalling of trains; (Emphasis added)

3. Here there is a disagreement concerning track CO-51, and whether it was sufficiently long to accommodate M37631, the train set up for Conductor Bartlett. This train was 6425 feet in length, including the engines.

4. Issues

- A. Is the matter arbitrable?
- B. How long is track CO-51?;
- C. How long is the useable track on track CO-51?;
- D. In spotting train M37631 on tracks EE-05 and CO-51, did the Company breach articles 11.4 and 11.7 of Agreement 4.16 on “conductor only” trains?
- E. If so, what is the appropriate remedy?

A. Is the matter arbitrable?

Position of the Parties

5. The Company takes the position that the matter is not arbitrable, as the grievance was settled. It submits correspondence with the CROA office indicating that the matter was settled, based on a spreadsheet provided (see Tabs 15 and 16, Company documents).

6. The Union argues that the matter was not settled and points out that the payment made to Conductor Bartlett was recovered from him. It refers to the submissions made in a similar matter, **CROA 5013**.

Analysis and decision

7. For the reasons given in **CROA 5013**, I find that the matter is arbitrable.

B. How long is track CO-51?

8. The Parties are in agreement that the absolute length of track CO-51 is 7,032 feet.

C. How long is the useable track on track CO-51?Position of the Parties

9. The Company takes the position that the useable length of track CO-51 is 6,231 feet. It explains that CO-51 is a “hump track” with a significant slope going from north to south. It is equipped with inert retarders, designed to stop runaway cars. It notes that trains built in CO-51 must take into account the inert retarders and the fouling zones, such that the apparent length of the track is reduced by some 800 feet.

10. The Company notes that there is a consistent practice never to have trains longer than 6231 feet place in track CO-51(see Tab 4, Company documents, post-hearing submissions), while humping is in progress.

11. The Union argues that Conductor Bartlett’s train could have fit on to track CO-51, with suitable blocking in place.

Analysis and decision

12. In an earlier decision, **CROA 4895**, I highlighted the importance of articles 11.4 and 11.7 to the Union. I underlined the considerable jurisprudence which has developed over alleged and actual violations of these provisions.

13. Here, however, I find that the Union has not established a violation of the Agreement.

14. In **AH 560**, Arbitrator Picher recognized that doubling over was an exception to “hook and haul” for conductor only trains, where the track was insufficiently long to accommodate the train.

15. In **CROA 4895**, I found an infringement of article 11.7 (b), as the grievor was ordered to assemble his train from three separate tracks, when a single track could have accommodated his train:

15. As a starting point, it is clear that the grievor was ordered to perform tasks which ordinarily would fall outside the duties of a Conductor Only crew. Normally these tasks would be done by Yard Service crews, if in place, or Road Service crews, if not.

16. When the grievor began work, he was asked to assemble his train from three separate tracks. The fact that the cars were on three separate tracks, CL 01, CL 04 and CL 05, infringes article 11.7 (b) of the Collective Agreement: “doubling is limited to that necessary to assemble the train for departure account yard tracks being of insufficient length to hold the assembled train”. Here, the assembled train was 2441 feet. Any one of the tracks were long enough to hold the assembled train, with CL 01 at 3440 feet, CL 04 at 2970 feet and CL 05 at 3195 feet.

17. The situation is not dissimilar to that discussed in AH 606, where Arbitrator Picher found:

The rule in article 11 of the collective agreement is, in my opinion, clear. Presumptively, at the initial terminal cars are to be placed in the minimum number of tracks for departure. The limitation is to the number of tracks necessary, to be limited only by the possible insufficiency of track length to hold the fully assembled train. In the case at hand there was clearly no insufficiency of track space to accommodate the train of Conductor Stevenson, or the train of Conductor Griffin, from being contained in two tracks. Nor, for the reasons touched upon above, can I find that any switching was required to meet the requirements of the service within the exception provided in subparagraph (d) of article 11.7.

16. In my view, the Company has successfully established that the practice in Mac Yard is never to spot trains on track CO-51, while humping is in progress, at a greater length than 6231 feet.

17. The Company produced a memo (see Tab 9, Company documents) from Gordon Doyle, Sr. Officer Hump Process Control Systems, in which he explains how the

useable trackage is reduced by the need for buffering zones at each end of track CO-51: “In summary, there is a 317 ft. buffer on the North end of the track and a 275 ft. buffer on the South end of the track to accommodate safety. Removing these buffers from the track leaves a total useable space of 6231 ft. to the 1st set of inert retarders.”

18. The useable trackage and the Company practice is evidenced by the September, 2015 print out of trains in CO-51 (see Tab 4, Company documents), which shows all trains at less than 6231 ft. The explanation given by the Company with respect to the reduction in useable length due to retarders, foul zones and the need for safety appears to be a reasonable one.

19. It may be possible, as the Union alleges, to build a train on track CO-51 greater than 6231 feet, by the use of blocking or other devices or techniques, but that is not how the Yard usually operates. The Union argument that Arbitrator Picher had accepted in AH 606 that the track holds 6900 ft is, in my view, not determinative, as in that matter the issue was whether the train was properly set up in three tracks. There, the useable length of CO-51 was not in issue. Here, the useable trackage of CO-51 is directly contested.

20. I find that the customary useable length of CO-51 is 6231 feet, given the expressed safety concerns.

D. In spotting train M37631 on tracks EE-05 and CO-51, did the Company breach articles 11.4 and 11.7 of Agreement 4.16 on “conductor only” trains?

Analysis and decision

21. It is clear that insufficient track length is a recognized exception to the general “hook and haul” approach. (see article 11.7b).

22. Given my finding that the customary useable length of CO-51 is 6231 feet, it is clear that the train of Conductor Bartlett at 6425 feet could not fit on the track. The

fact that his train was placed on the minimum number of additional tracks (here two tracks in total) does not breach the Agreement. The current situation is distinguishable from that in **CROA 4895**, as the minimum number of tracks has been used.

23. Given this finding, there is no need to rule on the additional argument from the Company that components of the train only arrived shortly before the train was scheduled for departure.

E. If so, what is the appropriate remedy?

24. Given that there has not been a breach of articles 11.4 and 11.7 of the Agreement, the grievance must be dismissed.

25. I remain seized for any questions of interpretation or application.

May 22, 2024

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

**JAMES CAMERON
ARBITRATOR**