CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3502

Heard in Edmonton, Wednesday 13, July 2005

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The abolishment of yard assignments and subsequent replacement by a road switcher in Regina, Saskatchewan.

UNION'S STATEMENT OF ISSUE:

The Company abolished the 1500 yard assignment in Regina, Saskatchewan, replacing it with a road switcher assignment. This new "road" assignment continues to perform the duties that the previous "yard" assignment had performed.

The Union contends that any work that had been previously performed by the 1500 yard assignment falls under the provisions of article 102 of agreement 4.3 and cannot be re-assigned to road service employees, working a road switcher assignment.

Additionally, the Union contends that, even if such work can be assigned to road service employees, such re-assignment would constitute a material change in working conditions and, as such, be subject to the provisions of article 139 of agreement 4.3.

The Company disagrees.

FOR THE UNION:
(SGD.) M. J. RUTZKI
FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

B. Laidlaw	– Manager, Labour Relations, Edmonton
J. Torchia	– Director, Labour Relations, Edmonton
J. Wood	– Trainmaster, Winnipeg
D. Brodie	– Manager, Labour Relations, Edmonton
K. Morris	– Manager, Labour Relations, Edmonton
S. Blackmore	– Manager, Labour Relations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
B. R. Boechler	– General Chairperson, Edmonton
R. A. Hackl	– Vice-General Chairperson, Edmonton
R. Barr	– Vice-General Chairperson, Regina
G. Bate	– Local Chairperson, Canora
S. LeBlanc	– General Chairperson, BC Rail, Prince George

AWARD OF THE ARBITRATOR

In the Arbitrator's view the instant case turns substantially on the application of article 102.1 of the collective agreement. Entitled "Yard Service Employees' Work Defined" it reads as follows:

> **Yard Service Employees' Work Defined**
>
> **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 11.2.

The material before the Arbitrator establishes that industrial work within the switching limits of the Regina terminal had for years been performed consistently and traditionally by the 1500 yard assignment. It is not disputed that that assignment was abolished and that all of the work of the assignment was effectively given to the newly established road switcher 523. The assignments accomplished by the road switcher are virtually identical to those performed by yard assignment 1500, involving all of the same industrial customers within switching limits at Regina. It would appear that for a period in excess of two years, from the establishment of the 523 road assignment first posted on November 9, 2002 until the present time the core duties of the road switcher assignment have been essentially identical to those of the abolished yard assignment.

While it appears that on a few rare occasions the road switcher has ventured outside the switching limits, on perhaps some four or five occasions, those incidental and extremely rare duties do not change the essential characteristic of the assignment.

The Company argues that the work of yard service employees is essentially defined by the first sentence of article 102.1. The Arbitrator cannot agree. That approach essentially gives no meaning to the second sentence which reads “Switching limits to cover all transfer and industrial work in connection with terminal.” As inelegant as the phrasing of that sentence may be, it clearly falls under the definition of “Yard Service Employees’ Work Defined” which appears as the title of the entire article. In the Arbitrator’s view a fair reading of that sentence must be taken to mean that switching limits are intended to protect for yard service employees all transfer and industrial work in connection with the terminal. That is precisely the work which is the subject of the instant dispute. Indeed, there would appear to be little purpose for establishing switching limits other than to give a clear definition to that territory which involves yard service, and defining certain limits on road service.

Nor does the Arbitrator see much persuasive value in the Company’s suggestion that the provisions of the instant collective agreement are to be distinguished from those of article 41 of collective agreement 4.16, which applies on the Company’s Eastern Lines. That provision reads as follows:

> **Yardmen’s Work Defined**
>
> **41.1** Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yardmen are employed, be considered as

> service to which yardmen 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.

While it is true that the word “switching” which appears in article 41.1 of collective agreement 4.16 is not to be found in the wording of article 102.1 of the instant collective agreement which applies in Western Canada, for the reasons touched upon above, I am satisfied that the parties in Western Canada clearly intended industrial work within switching limits to be protected as work of yard service employees. Moreover, the application of these provisions is substantially similar in both Eastern and Western Canada. Notably, the Company points to a number of locations where road switchers have been assigned to perform switching within yards. In virtually each case advanced, however, there were no yardmen employed in the locations where the practice was initiated. I am satisfied that like article 41.1 in collective agreement 4.16, article 102.1 of the instant collective agreement was plainly fashioned to protect those locations where yard assignments are established.

I must agree with counsel for the Union that if the interpretation of the Company should obtain, the provisions of the collective agreement intended to protect the scope of yard assignments and yard service employees’ work would become close to meaningless. Given the wording of article 102.1, how can it be said that the parties would have intended that the Company could fully assign the regular work of a yard assignment to a road crew? To so conclude would, in my opinion, fly in the face of both the letter and the spirit of the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company violated article 102 of the collective agreement by improperly assigning the 523 road assignment to perform the work of the abolished 1500 yard assignment. The Company is directed to cease and desist from that violation of the collective agreement and to reinstate the abolished yard assignment or, alternatively, to treat the 523 road assignment as a yard assignment for all purposes of the collective agreement. The Company is further directed to make whole any employee who may have lost wages or benefits by reason of the improper assignment of work by the Company. In light of these conclusions I do not consider it necessary to deal with the alternative submission of the Union based on an alleged material change under the terms of article 139. Should the parties have any difficulty with respect to the interpretation or implementation of this award the matter may be spoken to.

July 19, 2005

(signed) MICHEL G. PICHER
ARBITRATOR