CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4025

Heard in Montreal, Tuesday, 12 July 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Locomotive Engineers in through freight Conductor-Only service are being requested to perform switching at the final terminal at Moncton and Halifax.

JOINT STATEMENT OF ISSUE:

On June 30, 2009, Locomotive Engineer R. Toole was requested to perform switching upon arrival at Halifax on train Q12031-28.

The Union's position is that the crew on train 120 was required to perform switching at the final terminal in excess of that contemplated by the collective agreement and the crew was required to perform more than two designated cuts. The Union requests that he be paid 100 miles in accordance with article 13 of the collective agreement.

Commencing in 2005 the Company began compelling crews arriving at the final terminals of Moncton and Halifax to perform additional switching manoeuvres which the Union has consistently asserted to be in violation of the provisions of the collective agreement including but not limited to the 1992 Conductor-Only Agreement, articles 12A, 13 and Addendum 74 of Agreement 1.1. The Union contends that the collective agreement is clear in respect of the work requirements of through freight Conductor-Only crews arriving at the final terminals of Moncton and Halifax.

The Company disagrees with the Union.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. LECLERC	**(SGD.) D. GAGNÉ**
GENERAL CHAIRMAN	**FOR: SENIOR VICE-PRESIDENT, EASTERN REGION**

There appeared on behalf of the Company:

D. Gagné	– Sr. Manager, Labour Relations, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Toronto
A. Daigle	– Manager, Labour Relations, Montreal
D. Laroche	– Manager, Labour Relations, Montreal
J. Parsons	– Trainmaster, Halifax
G. Dunberry	– Superintendent, Quebec Operations, Quebec

There appeared on behalf of the Union:

C. Smith	– Vice-General Chairman (ret'd)
R. Leclerc	– General Chairman, Shawinigan
J-M Hallé	– Vice-General Chairman, Quebec
T. Markewich	– Vice-General Chairman, CN Lines West, Edmonton

AWARD OF THE ARBITRATOR

The Union challenges the Company's practice whereby locomotive engineers working in conductor-only service have been required to perform switching in relation to their own train upon arrival at their final terminals of Halifax and Moncton. The sample case provided to the Arbitrator involves the yarding of a train operated by Locomotive Engineer Toole arriving at Rockingham on June 30, 2009. The following reflects the switching which he was required to perform in yarding his train that day.

Haul into RH 11 and cut off 78 cars

Set over 9 cars to RH ladder track

Set over 34 cars to RH 10

Set over 18 cars to RH ladder track

Set over 13 cars to RH 07

Pick up RH ladder track and set into RG 12

Run around RG 12

Set 27 cars to RY 01

Locomotive Engineer Toole was paid 12-1/2 miles over and above all other earnings for the switching which he was required to perform in the yarding of his train. The Union maintains that the work in question is beyond what is contemplated in conductor-only service and that what Mr. Toole was required to do was effectively marshalling, which would qualify as "other work" within the meaning of article 13.1 of the collective agreement, so that a minimum 100 miles should be paid for that service.

The following articles are pertinent to the resolution of this grievance:

ARTICLE 12A
Switching at Initial or final Terminal
in a Conductor Only Operation

12A.1 When locomotive engineers on trains operating in through freight service with a train crew consist of a conductor only are required to perform switching in connection with their own train at the initial or final terminal (except to set off a bad order car or cars or to lift a bad order car or cars after being repaired), they will be entitled to a payment of 12-1/2 miles over and above all other earnings for the tour of duty.

12A.2 This article does not apply to locomotive engineers deadheading.

ARTICLE 13
Release at Final Terminal – Freight Service

13.1 Where yard engines are on duty locomotive engineers will be considered released from duty on arrival at objective terminals after yarding their train in a minimum number of tracks, including putting their caboose away if necessary, except that they may be required to perform switching in connection with their own train to set off and if necessary spot important or bad order cars. To accomplish this work they may be required to re-spot other equipment involved in performing this service. Should they be required to perform other work when yard engines are on duty or to make short runs out of the terminal they will be paid a minimum of 100 miles for such service.

13.2 In the application of paragraph 13.1, when locomotive engineers are instructed to yard their train in a particular track at a terminal and such track will not hold the entire train, they will double over surplus cars or a designated cut of cars to another yard track. In cases of yard congestion where there is insufficient room to double over all the cars to one track, it will be necessary to double over to more than one track, in the manner

> described above, to effectively yard the train. Locomotive engineers (including those working in a conductor-only operation) required to double over designated cuts of cars will be paid 12-1/2 miles in addition to all other earnings for the tour of duty, such mileage to be included in computing a locomotive engineer's total mileage in the working month.
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> **NOTE:** In making the double-over, locomotive engineers will not be required to marshal the double-over (e.g. setting over 10 cars for one destination to one track and 10 cars for another destination to another track). It is the intent of paragraph 13.2 that surplus cars be doubled over, if possible, to one other track.

In the Arbitrator's view the Union's claim is well founded. It is true, as the Company asserts, that it is open to the employer to direct that the crew of an incoming train deposit certain segments of their train at different places within a yard. **CROA 2099** recognized that the Company can direct an incoming road crew to deliver parts of their train to designated delivery points in a destination yard, such work being recognized as switching in connection with their own train. In that case, which concerned a grievance filed under the conductors' collective agreement, the following comments appear:

> The Union's representative argues that to allow the Company's interpretation to stand would effectively give it concessions which it sought and did not gain at the bargaining table. With that I cannot agree. It appears that on two occasions the Company sought to amend Article 7.9(d) to gain the ability to cut trains which do not fit onto a single storage track into blocks that correspond to the composition of additional trains. The interpretation of Article 7.9(d) in this award does not give that right to the Company, a right that would be tantamount to marshalling trains. The right of the Company to direct an incoming road crew to set off all or part of its own train at a designated delivery point for unloading in the destination yard is entirely different. Such work continues to be switching in connection with their own train.
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> …
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> For the reasons related above, I am satisfied that the parties have preserved within their Collective Agreement a degree of distinction between the concept of switching required to be performed by a road crew at a destination yard in connection with their own train and the concept of putting their own train away on a minimum number of tracks. Article 7.9(d) was intended to clarify the rights of road crews in respect of putting away their train, but it did not have the purpose or effect of abrogating the rights of the Company or the obligations of the employees in respect of their long established duty to perform switching in

> connection with their own train as they had previously been required to do. I can find nothing in the history or language of Article 7.9(d) to overrule the prior awards of this Office which has held that the setting off and spotting of cars at a destination yard as part of the delivery process falls within the meaning of the phrase “switching required in connection with their own train” contained in Article 41.1 of the Collective Agreement. That is what the crew were required to do upon arrival at Brampton by cutting and spotting the Brampton destined cars on Pad No. 4 as directed. The placement of those cars at that point, as well as the remainder of the cars and the caboose on a separate track designated by the Company is consistent with the putting away of their own train, including its caboose, on a minimum number of tracks as contemplated in Article 41.1 of the Collective Agreement.

The issue in the instant case is whether the work which was assigned to Locomotive Engineer Toole, and the similarly situated locomotive engineers whose other grievances are similar, was in fact required to do something more than switching in relation to his own train. In considering that question I find it instructive to read carefully the provisions of article 13 which generally govern the duties to be performed by crews at final terminals in freight service. In particular, attention must be paid to article 13.2 of the collective agreement which specifically deals with the doubling over of a train, including a train in conductor-only operations. Significantly, the Note to article 13.2 expressly states that marshalling is not to be part of the crew’s assignment when doubling over is necessary. It is clear from the note that marshalling is conceived as being instructed to set off a certain cut of cars for a given destination in one track and another set of cars for another destination in a different track.

Can it be said that because Halifax is the final destination, and that the cars in question will not be furthered onwards, that the Note does not apply? Would the language apply differently to Moncton where presumably cars which are spotted are being staged for onward travel to another destination? I do not think that the distinction

between the two situations can hold. It appears clear to the Arbitrator that the overarching intention of article 13.2 of the collective agreement is to ensure that where yard engines are on duty locomotive engineers will not be required to do switching in relation to their own train which amounts to marshalling.

How, then, can these principles be reconciled with the provisions of article 12A.1 which govern conductor-only operations and expressly provide that locomotive engineers can be required to perform switching “in connection with their own train” at the initial or final terminal for which the payment of 12-1/2 miles is contemplated?

In the Arbitrator’s view it is important to read the provisions of article 12A.1 and article 13 in a rational and complementary manner. In doing so I consider it significant that article 13.2 expressly states that it applies to conductor-only operations. It would appear to be to be clear from the language of the appended Note to article 13.2 that marshalling is not work to be performed in the normal yarding a conductor-only train. I am satisfied that what the collective agreement contemplates is that an incoming train crew in conductor-only service can be directed to deposit segments of their train at various locations in the destination yard, and that such work is to be considered switching in relation to their own train. Where, however, they are compelled to disassemble and reassemble sets of cars, moving them from one track to another to create differently constituted cuts of cars in the manner required of Locomotive Engineer Toole, they are indeed performing marshalling in the sense prohibited by the Note to article 13.2 of the collective agreement. That interpretation is, moreover, most

consistent with the overall concept of conductor-only operation as being essentially a "hook and haul" concept.

On the whole, therefore, I am compelled to conclude that the Union is correct in its interpretation of the provisions of article 12A and 13 as they relate to the facts of the case presented. I am satisfied that the marshalling which was required to be performed must be viewed as "other work" within the meaning of article 13.1 of the collective agreement, so as to constitute work payable at a minimum 100 miles.

Given these conclusions I do not consider it necessary to address the alternative basis of the grievance, which the Union alleges is a violation of extended run principles. The grievance is therefore allowed. The Arbitrator directs that the grievor be compensated at 100 miles for the marshalling service he was required to perform in yarding train 120 on June 30, 2009.

July 22, 2011

(signed) MICHEL G. PICHER
ARBITRATOR