CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4425

Heard in Calgary, November 11, 2015

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's alleged violations of Articles 7, 11.7, 12, 41, 56, 61, 85 and 85.5 of the 4.16 Collective Agreement at the Terminal of Halifax, Nova Scotia.

JOINT STATEMENT OF ISSUE:

Between December 2010 and March 2014, Conductor Blair Hubley, while assigned on train Q120, filed 124 grievances for the Company's alleged violation of the Conductor Only provisions of the 4.16 Collective Agreement when he was required to perform switching on his train at the final terminal of Halifax, and then perform transfer work.

It is not disputed that the particulars of each grievance are similar if not identical in nature, the only differences being train length and yard tracks utilized upon the train's arrival in Halifax.

For discussion purposes, the parties have agreed to rely on the May 2, 2012 incident (GTS Ref 2012-00503). On that day, Conductor Hubley was instructed to yard his train in Halifax's Rockingham Yard in the following manner: pull into RH15, set cars out to RH10 and then set cars out to RH11. Conductor Hubley was then required to pick up cars from RH10 and take them to RG10 at Rockingham Yard.

Once the cars were placed in track RG10 at Rockingham Yard, Conductor Hubley was required to run around the cars and shove the cars from track RG10 to track RY02 at the Halifax Intermodal Terminal, and spot the cars on air.

The Union submits that the Company blatantly and indefensibly violated Articles 7, 11.7, 12, 41, 56, 61, 85 and 85.5.

The Union further submits that the Company in this instance has violated arbitral jurisprudence; CIRB 315 and the May 5, 2010 CIRB mediated Agreement.

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 7, 11.7, 12, 41, 56, 61, 85 and 85.5 of the 4.16 Collective Agreement
3. An order that the Company complies with Articles 7, 11.7, 12, 41, 56, 61, 85 and 85.5 of the 4.16 Collective Agreement.

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 disagrees with the Union's position and denies the Union's requests.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) J. Robbins	**(SGD.) A. Daigle for M. Farkouh**
General Chariperson	**Vice President, Eastern Region**

There appeared on behalf of the Company:

A. Daigle	– Manager Labour Relations, Montreal
M. Marshall	– Senior Manager, Labour Relations, Toronto
N. Gagnon	– General Manager, Champlain

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairperson, Sarnia
J. Lennie	– Vice General Chairperson, Port Robinson

AWARD OF THE ARBITRATOR

The issue between the parties is the work performed upon arrival at the Halifax yard. The Union says that conductors, who are on conductor-only runs arriving at this terminal, are being required by the Company to perform switching, marshalling and transfer work beyond that which is mandated by the Collective Agreement. It says that work should properly be assigned as Customer Service Assignments ("CSAs"). (For the purpose of this dispute, yard service employees and CSAs are the same.) The Company responds that the work the conductors do at the Halifax terminal yard is consistent with what they are permitted to do under the Collective Agreement provisions. The Collective Agreement provisions relevant to this dispute are found in Articles 7.9(e), 11, 41.1 and 12 of the 4.16 Agreement:

> **7.9 (e):** Upon arrival at the objective terminal, road crews may be required to set off 2 blocks of cars into 2 designated tracks.
> **Note:** trains specifically identified in accordance with Addendum No. 101 will be require to perform additional duties in accordance with the process outlined in that Addendum.

Note: Except as provided in sub-paragraph 7.9 (d), employees will not be required to marshall trains upon arrival at terminals (e.g.: setting over 10 cars for one destination to one track, and 10 cars for another destination to another track).

…

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

…

11.9: (This Paragraph 11.9 is only applicable to Atlantic Canada – Joffre East).
All assignments will have two (2) employees' a locomotive engineer and a conductor. Additional employees will be assigned as may be required by the Company. This does not prevent employees from being cycled independently on certain assignments.

…

12.6: Employees in Road Switcher Service may be required to perform switching, transfer work and industrial work wholly within the recognized switching limits.

…

12.19: (Applicable to Customer Service Assignments – Atlantic Canada Only).
The Yard and Road Switcher provisions of the 4.16 Agreement shall apply unless specifically modified herein.

…

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 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. Upon arrival at the objective terminal, road crews may be required to set off 2 blocks of cars into 2 designated tracks.

The grievor, Conductor Blair Hubley claimed payments between the period December 2010 and March 2014. For the purpose of determining the dispute between the parties, they rely on facts occurring on May 2, 2012. For all relevant purposes the facts are the same for each grievance filed on behalf of Conductor Hubley.

Train Q120 operates between Toronto and Halifax. It operates Conductor Only since agreements entered into in the 1990s. Those agreements have since made their way into the Collective Agreement. This means that trains in through freight service operate with a conductor but without an assistant conductor and subject to specific Collective Agreement provisions which are outlined below.

On May 2, 2012, Train Q120 arrived in the Halifax terminal, or more specifically the Rockingham Yard of the Halifax terminal. Conductor Hubley was required to pull into track R11 and set off a block of cars into RH10. The Union contends that was the first designated cut. He then put cars back into RH11 and back into RH10. The Union says this was the second designated cut and should have marked the end of the assignment in accordance with Article 7.9 (e) of the Collective Agreement.

After the events described, Conductor Hubley was then told to pick up cars from RH10 and take them to RG10. He was then instructed to run around the cars and shove them from RG10 to RY02 at the Halifax Intermodal Terminal (the “HIT”). The HIT is part

of the Halifax terminal. The Union contends that anything after Conductor Hubley placed the cars in RH10 is CSA work and beyond the two designated cuts provided for in Article 7.9.

Conductor Hubley submitted a claim for a basic day (100 miles) at yard rates for what he and the Union believed to be the additional work, but the claim was denied.

The Company says it complied with the Collective Agreement. It asserts that the scenario described, setting off cars at the HIT is to "meet the requirements of service" (Article 11.7 (d)) *g* or is incidental to the instruction. For this latter proposition the Company relies on **CROA&DR 4151**. In that case, this Office dealt with the case in Moncton where two blocks of cars were to be set off and were not adjacent to each other. The Arbitrator found that the assignment in that case was consistent with Article 7.9(e) as described in the following:

> A review of the facts presented confirms that the assignment which is here grieved corresponds exactly to what is permitted by article 7.9(e). In the example placed before the Arbitrator, the incoming crew was required to set off the Moncton destined block of cars into the Intermodal Pad, P005. They were also required to set off the Saint John destined block of cars into track TH-01. Obviously, to make those moves they needed to perform some dismantling of their train and related switching, separating certain of the Halifax destined blocks of cars, and thereafter reassembling them. In my view, that work was plainly incidental to the instruction to set off no more than two blocks of cars into two designated tracks. That directive was entirely consistent with the prerogative of the Company as expressly preserved in the language of article 7.9(e) of the collective agreement.

Further the Company says the work described in this case did not involve marshalling or "building" of the train. It was simply the requirement that Conductor

Hubley put away his own train. And the Company argues that Addendum 106A overrides article 41.1 of the 4.16 agreement because in Atlantic Canada there is an elimination of yard and road distinctions. The Union also relies on **CROA&DR 4025**, a case involving the Locomotive Engineer's collective agreement. The Company responds that that case was about marshalling, well beyond work that Conductor Hubley was asked to do at Halifax yard.

The Union asserts that this case represents another of the Company's continued and repeated violations of Article 41 and the other applicable articles of the Collective Agreement. It argues that the Company has been advised on many occasions in the context of both arbitral awards (**AH-560, AH-606** and a Canada Labour Relations Board case (**CIRB 315** and a May 5, 2010 CIRB mediated agreement) of repeated and recurring violations in respect of this disputed work Accordingly, the Union also seeks a remedy from this Office under Addendum 123 of the Collective Agreement for a monetary award of general damages to the TCRC Central Committee in the amount of $50,000.

To the extent the Company's case is that the switching at Halifax yard was to meet the requirements of service, I reject that proposition. As was held stated in **AH-606**:

> … The Company's representative submits that in that situation drawing cars from all three tracks was necessary "… to meet the requirements of the service" within the meaning of article 11.7(d), so that it was permissible.
>
> The Arbitrator cannot agree. It is well settled that the concept of "the requirements of the service" is not the equivalent of the arrangement which would best suit the convenience or efficiency

> of the Company. While customer service might have a bearing, it is generally external factors, such as safety regulations or operating rules which are intended to be caught by the phrase "the requirements of the service".

I find that the work required of Conductor Hubley after he placed cars in RH10 and RH11 was neither necessarily incidental to, nor a requirement of service, such as would fall within the Collective Agreement interpretation suggested by the Company. He had put his train away at his destination yard. Any further movement properly fell to the yard crew. After he moved the cars in those two tracks, Conductor Hubley was asked to perform a further and new task, to bring the cars around to the HIT so they would be ready for future movement out of the yard.

This application of the facts in this case and the Union's position is consistent with the one expressed in **CROA&DR 3182**:

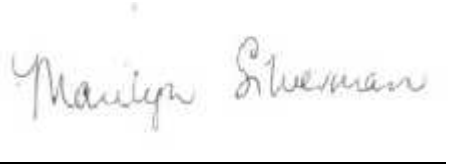
> …the Arbitrator has some difficulty appreciating how the Company can assert that the movement of cars from one point inside the switching limits of Montreal to another point for furtherance onward by another road crew can be said to be switching "… in connection with their own train"

And in **CROA&DR 2099** where the arbitrator held that, "the fact that the …… cars were set off in a track convenient to their future movement on another train does not change the essence of what transpired."

Accordingly, the grievance is allowed in part. I find that Conductor Hubley was asked to do more than the designed two cuts on the occasion set out in the facts relied on for this determination. I find that the Company has violated Article 41.1 of the

collective agreement. Although the Union suggests that I not remit the matter of damages back to the parties for determination, I am doing so in order for the parties to arrive at a precise calculation of what is owed for the violation on each of the days grieved. I remain seized in the event they are unable to resolve this matter.

The request for damages to the Union under Addendum 123, is denied. The Company did rely on an Award of this Office which, although I have rejected as determinative, did contain an arguable basis for asserting that argument. Additionally, this case occurred in the Halifax terminal which had not yet been the subject of an Award on this issue.



February 8, 2016

MARILYN SILVERMAN
ARBITRATOR