

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2919

Heard in Montreal, Wednesday, 10 December 1997

concerning

**Canadian National Railway Company**

and

**Canadian Council of Railway Operating Unions  
[United Transportation Union]**

### EX PARTE

#### **DISPUTE:**

Time Claims of N. Wilson under articles 41 & 37 of the 4.16 collective agreement.

#### **EX PARTE STATEMENT OF ISSUE:**

Prior to the fall change of time 1994 Road Switcher 545 worked outside of the Toronto area switching limits. At the fall change of time, this assignment was abolished and the work performed by Train 545 was to be handled by a way freight assignment operating out of Barrie, Ontario. Subsequent to the way freight being required to handle train 545's work, the Company then directed KO10 to perform the work that was originally performed by train 545.

The grievor who was working train KO10 submitted time claims each time they were required to perform work outside of the Toronto area switching limits.

The Company has declined these claims.

#### **FOR THE COUNCIL:**

**(SGD.) N. MATHEWSON**

**for: GENERAL CHAIRMAN**

There appeared on behalf of the Company:

J. Vaasjo – Labour Relations Officer, Toronto

G. Search – Assistant Manager, Labour Relations, Toronto

D. MacKenzie – Labour Relations Officer, Toronto

M. Stock – Labour Relations Officer, Toronto

And on behalf of the Council:

M. P. Gregotski – General Chairperson, Fort Erie

G. J. Binsfeld – Vice-General Chairperson, Fort Erie

G. Anderson – Secretary, GCA, Fort Erie

## **AWARD OF THE ARBITRATOR**

The facts are not in dispute. With the fall change of time in 1994 the Company changed certain aspects of its operations. Among other things, it re-routed trains 336/337, operating between Thunder Bay and Toronto, to run over the Bala Subdivision enroute to MacMillan Yard. This left certain cars at MacMillan yard to be forwarded to Barrie. Consequently, train 545, previously a road switcher, was made into a way freight assignment operating out of Barrie to MacMillan Yard, with work extending over the York Subdivision and the southern portion of the Bala Subdivision. In the result, certain road switching previously performed by train 545, including the industrial switching for a customer's printing plant, was assigned to yard crews on assignment KO10. The grievance filed by Conductor Wilson and crew alleges that the switching in question should not have been performed by yard crews, and seeks the payment of 100 miles at road switcher rates for each alleged violation.

At issue is the application of article 37.3 of the collective agreement which reads as follows:

**37.3 (a) In order to provide timely transportation service, yard crews may be used within a distance of 15 miles outside the established switching limits, to a maximum of 20 miles where the first siding extends to within 20 miles.**

**(b)** Yard crews used outside of established switching limits in such circumstances during their tour of duty shall be compensated on a continuous time basis at yard rates and conditions.

**(c) The application of this paragraph 37.3 shall in no way have the effect of abolishing road switcher assignments.**

**(d)** Yard crews may be used in excess of the miles outlined in sub-paragraph 37.3(a) only in accordance with paragraphs 37.1 and 37.2.

(emphasis added)

Before the Arbitrator the Council alleges that the Company's decision to assign the switching out of the client printing company's work, which is admittedly outside switching limits, to yard crews, caused the abolishing of train 545 as a road switcher. In partial support of its position the Council refers the Arbitrator to addendum no. 31 of the collective agreement which reads, in part, as follows:

Transfers manned by yard crews may be operated between Toronto Yard and other yards in Toronto Terminal over the York and Uxbridge Subdivisions without penalty. It is understood that transfer movements so operated will not set out or lift cars or perform switching outside of designated switching limits.

The Council does not point to the foregoing provision as one which has been violated by the Company, as indeed it could not, to the extent that it is not cited in the *ex parte* statement of issue from which the Arbitrator draws jurisdiction. It does, however, point to that document by way of background to indicate that the parties have a long-standing local agreement to protect against road work being assigned to yard crews.

Upon a review of the material filed, the Arbitrator cannot sustain the grievance. In my view it cannot fairly be said that the use of yard crews to switch out cars at the printing company's location, outside yard limits, was of itself the cause for abolishing train 545 as a road switcher assignment, and converting it to a way freight. That change, in my view, was the result of the re-routing by the Company of trains 336/337, and the related adjustment in the manner in which freight was thereafter to be moved between MacMillan Yard and Barrie. That was the cause of the change

which the Company made, well in keeping with its practice of making such changes in assignments with the spring and fall changes of time. If, as is not the case, the facts revealed that the Company had simply assigned the industrial switching on the Bala Subdivision to yard crews because it was less costly or more convenient to do so, the grievance might be more compelling. In fact, however, the change in the classification of train 545 from road switcher to way freight was caused by operating adjustments made for a valid business purpose, within the prerogatives of the Company. While the use of yard crews to service the printing company on the Bala Subdivision was an effect of that change, it was not its cause.

For the foregoing reasons the grievance is dismissed.

December 15, 1997

(signed) MICHEL G. PICHER

**ARBITRATOR**