

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3182

Heard in Montreal, Tuesday, 13 February 2001

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

Application of articles 2,7 and 41 of agreement 4.16 and CROA Case NO. 3043.

COUNCIL'S STATEMENT OF ISSUE:

In September 1998, the Company implemented a new operation plan. Given it involved the transfer of cars between two yards in Montreal terminal, employees submitted claims and the dispute was referred to arbitration (CROA Case No. 3043).

The Company is still of the opinion that it has the right to request that train crews ordered from Joffre (Quebec) pick up cars in Pointe St. Charles yard, one of the series of yards in Montreal terminal, and transport them to Taschereau yard, the final destination for these crews. The Company has declined all claims. The Company requires train crews to continue the practice. The Company has refused to discontinue the practice notwithstanding CROA Case No. 3042 and the Council's objections.

The Union maintains, as it did in CROA Case No. 3043 and with the same applicable articles (article 2, 5 and 71) of agreement 4.16, that the switching of cars between two yards in Montreal terminal constitutes a "transfer movement" and the work belongs to yard service employees, notwithstanding the same number of trains running between Joffre and Toronto. The Union maintains that the Company has violated the collective agreement and seeks a ruling to that effect. The Union also seeks an order for compensation for all affected members and claimants.

The Company disagrees with the Union's position.

FOR THE COUNCIL:

(SGD.) R. LEBEL

GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Coleman	– Counsel, Montreal
A-F Charette	– Counsel, Montreal
D. Laurendeau	– Labour Relations Associate, Montreal
J-J Lajoie	– General Supervisor Transportation
P. Marquis	– Internal Consultant

And on behalf of the Council:

M. Church	– Counsel, Toronto
R. Lebel	– General Chairperson, Quebec
W. G. Scarrow	– Vice-President, Ottawa
R. Long	– General Chairperson, Brantford
J. P. Paquette	– Local Chairperson, Montreal
F. Price	– Vice-General Chairperson, Saint John
D. J. Shewchuk	– General Chairman, BLE, Saskatoon
G. Broda	– General Secretary/Treasurer, BLE, Saskatoon
D. E. Brummund	– Vice-General Chairman, Kamloops
B. Boechler	– Vice-General Chairperson, Edmonton

Adjourned by agreement of the parties until June 11, 2002.

AWARD OF THE ARBITRATOR

The Council alleges that the Company has violated a number of provisions of the collective agreement, most particularly article 41.1 which prevents the utilization of road crews to perform yard transfers in closed yards. It submits that the circumstances of the instant case are indistinguishable from those recently considered by this Office in **CROA 3043**, and that the Company should be bound by the principle of issue estoppel. It seeks a direction that the employees affected by the Company's new policy be compensated at yard rates of pay for the time expended in what the Council characterizes as transfer movements within the greater Montreal yard.

The facts do not appear to be substantially disputed, and are well represented by two examples cited by the Council. The first concerns claims filed on behalf of Conductor Dubois. In October of 1999 Mr. Dubois was assigned to work train No. 317 as a road assignment between Joffre and Montreal, with a destination

terminal of Taschereau Yard. On at least two occasions Conductor Dubois' train was required to pick up one or more dimensional cars at St. Lambert Yard and to transfer them to Taschereau yard. Conductor Dubois' assignment then terminated at Taschereau yard and the train, augmented by the dimensional cars, was then taken onwards towards Toronto by another road crew, also under the same train number 317. The Company denied Conductor Dubois' time claim for transfer work, asserting that the work was in relation to his own train, train 317 operating between Becancour, Quebec and MacMillan Yard, Ontario.

The second example advanced is that concerning Conductor J. Guay. Conductor Guay operated train 309 between Joffre and Montreal on February 11, 2000. He was directed to pick up some forty-fives cars at Southwark (St. Lambert) within Montreal yard and to transfer those cars, along with the balance of his train, to Turcot Yard. It appears that his assignment ended there and that a different road crew handled the expanded train onwards from Turcot to Belleville. Again, Conductor Guay's claim for time expended in yard transfer work was declined.

An extensive series of decisions of this Office has confirmed that article 41.1 and its predecessor provisions, do prevent the assignment of transfer work within closed yards to road crews (**CROA 11, 203, 1590, 2286, 3043**). In the Arbitrator's view it is useful to review what was said in **CROA 3043**. That award provides, in part, the following:

The facts pertinent to the grievance are not in dispute. Road service crews operating trains travelling from Garneau Yard in Quebec City to Taschereau Yard in Montreal must pick up cars at the Rivière des Prairies (R.D.P.) Yard on their way into Montreal and transport them to Taschereau Yard, which is the final terminal for their train. Since both yards are located within the Montreal switching limits, the Union maintains that the practice in question, i.e., picking up or setting off cars while en route, constitutes a switching operation that contravenes article 41.1 of the collective agreement, and claims that the employees in question must then be paid separately, at yard service employee rates.

The company maintains that this practice in no way contravenes the article in question. The Company's representatives argue that cars picked up or set off are part of the road crew's train, since they become part of the same consist that will be transported, by another train crew, to Toronto, without any other switching being performed. According to the Company, for the purposes of applying article 41.1, the expression "their own train" refers to the train travelling from Garneau, in Quebec City, to Toronto. From this perspective, the

crew operating the train from Garneau to Taschereau is only being called upon to perform switching in connection with “their own train” in that cars picked up at R.D.P. Yard will be transported to Toronto, via Taschereau, as part of the, same train.

The Arbitrator cannot accept the Company’s interpretation. Clearly, the train travelling from Garneau to Taschereau may be made up of several “blocks” of cars, some of which will be sent on to Toronto, and others to Ottawa or elsewhere. Furthermore, the “train” arriving at Taschereau Yard from Garneau is not necessarily the same “train” that then leaves for Toronto. For the purposes of article 41.1, the expression “their own train” must essentially be understood as referring to the specific train operated by a road service crew, and not to a number that the Company may assign to a collection of cars that may travel further, operated by another road service crew.

In the instant case, the Garneau crew, which is required to pick up cars when it arrives at the Rivière des Prairies Yard in Montreal, in order to set them off at Taschereau Yard, is not performing this work as switching in connection with their own train. On the contrary, they are performing this task to build another train, whose composition will be different and which will be operated by another road service crew. For the purposes of job security, it is that reality which is the underlying intention of article 41.1. It cannot be bypassed by the manipulation of the number which the Company assigns to one or several trains, without regard to their particular composition, or to the crews which are assigned to them.

(translation)

As can be seen from the foregoing, the operational reasons which motivated the Company’s initiative are understandable. As the award goes on to acknowledge, the parties recognize that there would be no violation of the provisions of article 41.1 if the departing Taschereau crew, bound for Toronto, had been required to collect the cars in the RDP yard on their way outwards, as part of assembling their own train. Nevertheless, the phrase “their **own** train” (emphasis added) is the controlling feature of article 41.1 as regards the limitations on switching within closed yards to be performed by crews in road service.

In the instant case the Company submits that there is a distinction to be drawn from the award in **CROA 3043**. Its representative stresses that in **CROA 3043** the Arbitrator was dealing, at least in part, with picking up cars at Rivière

des Prairies yard in Montreal "... in order to set them off at Taschereau yard, ...". The Company's representative submits that it is that distinction which caused the Arbitrator to conclude that the work was not work in relation to the crew's own train. He maintains that the instant case is different, in that the cars collected within the greater Montreal yard which are the subject of this grievance were not set off at Taschereau yard or Turcot yard, but rather remained within the same train, for furtherance onward to Toronto by the operation of another road crew. That, the Company maintains, is permissible within the language of article 41.1 of the collective agreement.

With the greatest respect, the Arbitrator cannot agree. As is evident from the broader language of **CROA 3043**, the Arbitrator expressly rejected the position of the Company, which was that "the crew operating the train from Garneau to Taschereau is only being called upon to perform switching in connection with "their own train" in that cars picked up at RDP yard will be transported to Toronto, via Taschereau, as part of the same train." It is that proposition which the Arbitrator declined to sustain, for reasons related within **CROA 3043**. With respect, having regard to the well-established jurisprudence cited above, as well as the past practice of more than thirty years in relation to the movement of cars between Joffre and Montreal, and onwards to Toronto, 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" in the sense contemplated by article 41.1 of the collective agreement.

The Arbitrator is bound to conclude that the examples concerning Conductors Dubois and Guay, as well as converse examples of the dropping of cars within the Montreal yard by crews operating from Taschereau to Joffre, constitutes a violation of the prohibition against transfer movements long established within the terms of article 41.1 of the collective agreement as interpreted by this Office. The fact that a car or a cut of cars collected in the manner described in this award may remain as part of the same consist for furtherance onward under another road crew does not change the fact that what has occurred is a yard transfer. As regards the incoming crew the work involved cannot properly be said to be in relation to their *own* train .

For all of the foregoing reasons the grievance is allowed. The Arbitrator directs that the Company forthwith pay all claims made in relation to this grievance. The Arbitrator further directs the Company to comply with the terms of article 41.1 as clarified in this award.

June 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR

