

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3309**

Heard in Montreal, Tuesday, 10 December 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**UNITED TRANSPORTATION UNION
EX PARTE**

DISPUTE:

Violation of article 41 of agreement 4.16. Implementation of an appropriate remedy consistent with the provisions of article 85, Addendum 123 of agreement 4.16.

UNION'S STATEMENT OF ISSUE:

On September 30, 2002, the crew on train M39331 30 was instructed to lift 12 cars from track AO 16 in Sarnia and transfer the traffic to Port Huron.

It is the Union's position that the Company was in violation of article 41. Transfer work within yards is service to which yard employees are entitled.

It is the Union's position that the Company violated the reasonable intent of articles 41 and, as a result, requested that an appropriate remedy be applied.

The Company declined the Union's request.

COMPANY'S STATEMENT OF ISSUE:

This dispute has been filed under the provisions of article 85, Addendum 123 and article 41 of agreement 4.16.

It is the Company's position that this grievance cannot be filed for arbitration under article 85, or addendum 123 of agreement 4.116. This article is very precise as to the conditions and/or criteria that must be met in order for it to be activated. Following is a straight lift form article 85:

When it is agreed between the Company and the General Chairperson of the Union that the reasonable intent of application of the Collective Agreement has been violated ...

... Cases will be considered if and only if the negotiated Collective Agreements do not provide for an existing penalty.

It is the Company's position that neither one of these criteria has been met, therefore, the grievance should not be at arbitration under article 85 The Remedy. The Union must progress the grievance under the proper submission which is article 84 of the 4.16 agreement, the grievance procedure.

Based on the above information the Company requests the Arbitrator to not allow the present submission of the Union to be heard in arbitration until such time as the proper steps of the collective agreement have been taken.

FOR THE UNION: FOR THE COMPANY:

(SGD.) R. A. BEATTY (SGD.) B. HOGAN

GENERAL CHAIRPERSON MANAGER, WORKFORCE STRATEGY

There appeared on behalf of the Company:

B. Hogan - Manager, Workforce Strategy, Toronto

J. Torchia - Director, Labour Relations, Edmonton

And on behalf of the Union:

M. Church - Counsel, Toronto

R. A. Beatty - General Chairperson, Sault Ste. Marie

W. G. scarrow - Sr. Vice-President, Ottawa

R. LeBel - General Chairperson, Quebec

J. Robbins - Vice-General Chairperson, Sarnia

G. Anderson - Vice-General Chairperson,

N. Beveridge - Local Chairperson, Montreal

M. G. Marcoux - Local Chairperson, Montreal

S. Pomet - Local Chairperson, Montreal

R. Dyon - General Chairman, BLE, Montreal

P. Vincent - Vice-General Chairman, BLE

B. Buckley - Local Chairman, BLE

A. Cumming - Observer

The hearing was adjourned by the Arbitrator until January 2003.