

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4555**

Heard in Calgary, May 10, 2017

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal advanced by the Union in response to the Company Breaching Article 19, Article 47.01, Article 51.01, and Article 73.37 of the Conductors' Collective Agreement.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

This dispute derives from the Company running reduced crews when Road Switcher and/or Yard Assignments are bulletined with 3 employees. Bulletined Assignments consisting of a Locomotive Engineer, Conductor and Trainman OR Locomotive Engineer, Foreman and Helper are being run absent the Trainman/Helper.

The Company did not respond to the Unions Step 2 or Step 3 grievances.

The Unions' position in this matter is these assignments are bulletined with 3 employees and cannot work without the proper amount of employees bulletined. Assignments are bulletined with 3 employees account the amount of work involved or account meeting Collective Agreement obligations and at no time should be required to work with less then what has been bulletined.

The Union is requesting the Company cease and desist the practice of using these reduced crews and call back or hire sufficient employees to ensure obligations are met. The Union also request that all employees who were available and not called be compensated accordingly as well as those affected employees who worked these reduced assignments be paid a cancellation payment for the times occurred as well as any C-Only premiums.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**  
**(SGD.) B. Hiller**  
**General Chairman**

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

C. Clark	– Assistant Director, Labour Relations, Calgary
D. Pezzaniti	– Manager, Labour Relations, Calgary
C. Tsoi	– Labour Relations Officer, Calgary
S. Oliver	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
W. Apsey	– General Chairman, Smiths Falls
D. Edward	– General Chairman, Calgary

### **AWARD OF THE ARBITRATOR**

On August 15, 2015 the Union filed a grievance on behalf of CTY (Conductors/Trainmen/Yardmen) located in Hamilton and Welland, Ontario. There are three full Yard Crew assignments bulletined at Hamilton and three full Road Switcher crew assignments bulletined at Welland.

The issue relates to the operation of the Yard Crew and Road Switcher assignments in Hamilton or Welland when the regularly assigned trainman is not available and a replacement employee to fill the vacancy cannot be located, or is not needed. When Yard Crew or Road Switchers are operating with a reduced crew of two employees, the reduced crew are paid the premiums contained in article 10 of the collective agreement for operating as “conductor only”. There is no dispute that the territory in question has been designated as a “conductor only” territory.

The Union argues in this case that the Company has been in breach of several provisions of the CTY collective agreement-articles 19, 47.01, 51.01 and 73.37-by assigning less than a full crew of three to the to the Yard Crew and Road Switcher assignments in Welland and in Hamilton. The Union noted, by way of example, that upon arrival at the bulletined and bid-upon assignment at the Welland Yard, a reduced

crew of two will be ordered to perform the work due to an employee shortage. The Union submits that what should occur in such circumstances is that the assignment should first be cancelled due to a lack of crew. If the Company then decides to run with a reduced crew, the reduced crew of two should be paid in line with the collective agreement for both the cancelled assignment (100 miles pay) and a new tour of duty for the reduced (“conductor only”) assignment.

The Company maintains that the double payment is not provided for in the collective agreement nor is it consistent with the concept of customer service.

Starting first with article 19, the Union alleges a breach of article 19.05 which reads as follows:

**19.05** (1) Assignments, other than work trains, will be bulletined specifying the home terminal, initial and objective terminals for each trip, territory over which the assignment is to perform service, starting time and days of operation. So far as is practicable, assignments will start at the bulletined starting time, *except that on any day, an assignment may be started up to five hours before the bulletin starting time*, but not earlier than that specified in the bulletin, unless otherwise mutually agreed. *Should an assignment not be called within five hours of its’ bulletin starting time, the assigned crew shall be cancelled.* When the bulletin starting time is changed more than three hours, the assignment will be re-bulletined.

(2) Local Officers of the Company and Local Chairmen may make arrangements, by mutual agreement, for a Road Switcher assignment to have different bulletined starting times on different days of the week.

I agree with the Company that the above provision is unhelpful in reference to the cancellation of assignments. The only reference to the cancellation of an assignment in 19.05(1) is if the assignment is not called within 5 hours of its bulletined starting time. There is no evidence of that happening here. Although the crew numbers may have

changed from the original bulletin, the assignment itself continues as scheduled. There is also no wording found in either 19.05 (1) or 19.05 (2) which deems a crew change from a three person crew to a conductor-only crew to be the equivalent to a cancellation of an assignment. Clear wording to that effect would be required to uphold the Union's interpretation of this provision. To do otherwise would amount to an amendment of the collective agreement by adding new terms that have not been agreed to by the parties. See: **CROA&DR 4078**.

The Union also claims a violation of Article 47.01 and Article 73.37. Neither of these two provisions apply to the facts here. Article 47.01 addresses the requirement for Yard Crew employees to be assigned duties for a fixed period of time; that is, there will be a designated point in time for regularly "going on-duty" and a point in time for "going off-duty". Article 73.67, in general, guarantees that Yard Crew employees will be paid for the number of days in the assignment.

The Union also claims a breach of article 51.01 which reads:

A yard crew shall consist of not less than a Foreperson and one Helper except as provided hereunder. Yard persons will not be required to work with less than a full crew.

The Company maintains that no Yard Crew assignments have been identified as being operated without a full crew. The Union's position is that the provision is clear and explicit that yard persons will not be required to work with less than a full crew. I agree. To interpret the provision otherwise would amount to a violation of the clear expression of the parties that the yard person must consist of a helper in addition to the foreperson.

The point of the Company of the need to maintain customer service is a well-placed concern but not one which should undermine the bargained rights of employees such as the yard persons. That is not to say that emergency circumstances will not arise where a manpower reduction is required. But those situations, as past practice has shown, used to occur only in emergency situations and not on an ongoing basis as the Union alleges is occurring today.

The grievance succeeds to the extent that the arbitrator finds and declares a breach of article 51.01. I direct the parties to meet with a view to identifying and discussing assignment issues in the Welland, Hamilton and other areas where the crew assignments are changed with little or no notice from three employees to conductor-only assignments. The focus of the meetings would be to address the Yard Crew assignments in those areas with a view to decreasing occasions where sudden reductions in three crew assignments to conductor-only assignments are taking place. I would also urge the parties to concurrently address similar concerns that have surfaced in the Road Switcher assignments. It is understood from previous experience that emergency circumstances do occur when conductor-only assignments are operationally necessary, but such occasions should be the exception and not the rule.

May 25, 2017



---

JOHN MOREAU  
ARBITRATOR