

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3171

Heard in Calgary, Thursday, November 16, 2000

Concerning

### CANADIAN PACIFIC RAILWAY COMPANY

And

### CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

#### EX PARTE

#### **DISPUTE:**

Locomotive engineers employed by Canadian Pacific Railway not being called to man Canadian Pacific Railway trains over Canadian National lines between Thunder Bay and Winnipeg commencing January 2000.

#### **COUNCIL'S STATEMENT OF ISSUE:**

An External Detour Agreement was negotiated between the Council and the Company and signed on March 3, 1999. The agreement defined the use of CP employees and the operation of CP trains over CN lines in cases of derailment, line blockages and planned track programs.

It is the position of the Council that the Company has violated the negotiated External Detour Agreement and requests that the locomotive engineers not called for the work be made whole for lost earnings. The Company's position is that the agreement is only effective when the Company elects to implement operations and the agreement cannot be utilized in this corridor.

The Company has declined the Council's request.

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

**(SGD.) D. C. CURTIS**  
**GENERAL CHAIRMAN**

Appearing on behalf of the Company:

D. E. Guerin	– Labour Relations Officer, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
G. J. Gionet	– Manager of Road Operations, Kenora
J. C. Copping	– Manager, Labour Relations, Calgary
C. M. Graham	– Labour Relations Officer, Calgary

Appearing on behalf of the Council:

- D. C. Curtis – General Chairman, Calgary
- L. O. Schillaci – General Chairperson, Calgary
- R. Harding – Local Chairman, Thunder Bay

### **AWARD OF THE ARBITRATOR**

The Company challenges the arbitrability of this matter, to the extent that it has been advanced for adjudication within the Canadian Railway Office of Arbitration. The dispute arises under the External Detour Agreement executed between the parties on March 3, 1999. On its face that agreement, which concerns terms and conditions governing the use of Company employees travelling without the assistance of pilots over CN lines, contains the following provision with respect to the resolution of disputes:

**12.1** Any disputes pertaining to the application of this agreement will be reviewed locally within 30 days and if not resolved will be advanced to the General Chairs and District General Manager for their review. If the matter remains unresolved within 30 days it is agreed that either party may bypass the normal steps for the grievance procedure and apply directly for expedited arbitration, utilizing the service of the current CROA arbitrator.

As can be seen from the foregoing, the parties have, in a manner consistent with other special agreements within the industry, agreed that in the event of a dispute the impasse resolution mechanism is to be arbitration. Rather than name any individual arbitrator, they have agreed upon an expedited process, with the arbitrator to be the person who holds the office of CROA arbitrator.

The language of article 12.1 is, in my view, clear in that it does not evidence an intention of the parties to have disputes under the External Detour Agreement processed through the normal stream of files heard and disposed of within the Canadian Railway Office of Arbitration. Quite to the contrary, they have selected an alternative forum, albeit that the arbitrator is to be the same individual who hears grievances within the CROA. That arrangement, not uncommon within the industry, allows for matters to be forwarded to the arbitrator in question, pursuant to an expedited process over which the parties retain full control.

On the whole, therefore, the Arbitrator is compelled to sustain the position of the Company, which is that the matter is not arbitrable within the forum of the Canadian Railway Office of Arbitration. That conclusion, however, obviously does not preclude the proper progressing of this dispute before the current CROA arbitrator, in proper conformity with article 12.1 of the External Detour Agreement of March 3, 1999.

November 20, 2000

**(signed) MICHEL G. PICHER**  
ARBITRATOR