

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3275

Heard in Montreal, Thursday, 11 July 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

And

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The unilateral increase in working hours, from ten (10) hours to twelve (12) hours, effective on May 13, 2002, relative to the Winnipeg/Fort Frances extended run corridor.

UNIONS' STATEMENT OF ISSUE:

On May 10, 2002 the Company notified the Council that the hours of work identified in article 60, paragraph 60.14(a) of collective agreement 1.2, and article 35, paragraph 35.10(b) of collective agreement 4.3, would be increased from the present ten (10) hours to twelve (12) hours. As a result of this unilateral action, train and engine crews are now required to work an additional two (2) hours prior to having the right to book rest under the provisions of article 28, paragraph 28.5 of agreement 1.2 and article 35, paragraph 35.10(b) of agreement 4.3.

The Council advanced their position that the implementation and maintaining of extended runs is administered jointly under the direction of the Regional Steering Committee and that any requests, from either party, relative to an increase or decrease in hours of work on any extended run must follow the nine (9) principles outlined in Addendum 79 of agreement 1.2 and Appendix 65 of agreement 4.3.

The Council contends that the Company has not followed the principles of extended runs nor have they taken into consideration the recommendations of the Regional Steering Committee (CCROU) which would effectively enhance the operation in that particular corridor to facilitate an acceptable level of success.

The Council further contends that the principles of extended runs are essential in the implementation and continued monitoring of extended runs and the Company is prohibited from acting independently outside the Addendum 79, agreement 1.2 and Appendix 65 of agreement 4.3.

The Company has declined the Council's grievance.

FOR THE BROTHERHOOD:

(SGD.) D. J. SHEWCHUK
GENERAL CHAIRMAN – BLE

FOR THE UNION:

(SGD.) B. J. HENRY
GENERAL CHAIRPERSON – UTU

There appeared on behalf of the Company:

- J. Coleman – Counsel, Montreal
- J. Torchia – Director, Labour Relations, Edmonton
- J. Vena – General Manager, Winnipeg
- D. VanCauwenburgh – Manager, Human Resources, Winnipeg

And on behalf of the UTU and the BLE:

- M. Church – Counsel, Toronto
- B. J. Henry – General Chairperson, UTU, Edmonton
- D. J. Shewchuk – General Chairman, BLE, Edmonton
- J. W. Armstrong – Vice-President, UTU, Edmonton
- R. Hackl – Vice-General Chairperson, UTU, Saskatoon
- B. Willows – Acting Vice-General Chairman, BLE, Winnipeg

AWARD OF THE ARBITRATOR

This arbitration concerns two grievances, brought by the Brotherhood of Locomotive Engineers and the United Transportation Union, respectively, concerning the Company's decision to increase working hours from ten hours to twelve hours on the Winnipeg-Fort Frances extended run. It is common ground that the provisions of both collective agreements are comparable for the purposes of the merits of this dispute.

The record discloses that in 1995 the Company and the Unions negotiated extended run agreements. In essence the agreements allowed the Company to utilize a single crew to run between two terminals, by-passing an intermediate terminal which previously would have been a crew change-off point. That necessitated employees being utilized for longer than the standard ten hours which applied to reduced freight crew consists. To that effect the provisions of article 35.10 of the United Transportation Union's collective agreement 4.3 were established as follows:

35.10 Rest En Route

General

35.10 (a) Train service employees who have been on duty 11 hours or more (10 hours or more when operating with a reduced freight crew consist) will have the right to book rest en route, if they so desire, in accordance with the provisions of paragraphs 35.10 to 35.16 of this Article. Train service employees are to be the judges of their own condition.

Note: En route may also include the initial and final terminal time.

Extended Runs Territory

35.10 (b) In the application of article 35.10 crews operating in an extended run territory will have the right to book rest as follows:

Winnipeg	– Sioux Lookout	11 hours
Vancouver	– Kamloops	12 hours
Kamloops	– Jasper	12 hours
Jasper	– Edmonton	12 hours
Edmonton	– Biggar	12 hours
Biggar	– Melville	12 hours
Melville	– Winnipeg	12 hours
Jasper	– Prince George	12 hours
Smithers	– Prince George	12 hours
Edmonton	– North Battleford	12 hours
Calgary	– Kindersley	12 hours
Edmonton	– Ram River	12 hours
Winnipeg	– Fort Frances	10 hours
Fort Frances	– Thunder Bay	11 hours
Edmonton	– Calgary	12 hours
Smithers	– Ridley Island & Prince Rupert	10 hours

Note: The hours on runs identified in this article may be increased, to a maximum of 12 hours, or decreased based on the principles set out in Appendix 65 of this Memorandum.

Article 28.5 of the Brotherhood of Locomotive Engineers's collective agreement 1.2 reads as follows:

Booking Rest En Route

General

28.5 (a) Locomotive engineers who have been on duty 10 hours or more will have the right to book rest en route, if they so desire, in accordance with the provisions of paragraphs 28.5 to 28.11 of this article. Locomotive engineers are to be the judges of their own condition.

Note: En route may also include the initial and final terminal time.

The 10 hours referred to in Article 28.5(a) and 28.9 are modified for crews operating in an extended run territory between the following home terminals:

Winnipeg	– Sioux Lookout	11 hours
Vancouver	– Kamloops	12 hours
Kamloops	– Jasper	12 hours
Jasper	– Edmonton	12 hours
Edmonton	– Biggar	12 hours
Biggar	– Melville	12 hours
Melville	– Winnipeg	12 hours
Jasper	– Prince George	12 hours
Smithers	– Prince George	12 hours
Edmonton	– North Battleford	12 hours
Calgary	– Kindersley	12 hours
Edmonton	– Ram River	12 hours
Thunder Bay	– Fort Frances	11 hours

Note: The hours on runs identified in paragraph 60.14 may be increased, to a maximum of 12 hours, or decreased based on the principles set out in Addendum No. 79 – Extended Runs.

Article 60.14 (a) of the same agreement reads:

60.14 (a) Extended run home terminals

Vancouver and Kamloops
 Kamloops and Jasper
 Jasper and Edmonton
 Edmonton and Biggar
 Biggar and Melville
 Winnipeg and Fort Frances
 Fort Frances and Thunder Bay
 Jasper and Prince George
 Smithers and Prince George
 Smithers and Ridley Island & Prince Rupert
 Edmonton & North Battleford
 Edmonton & Calgary

Appendix 65 of collective agreement no. 4.3 and Addendum no. 79 in collective agreement 1.2, in the form of a letter dated May 5, 1995, deal with a number of things, including the nine principles of extended runs. They also establish a number of committees, including a permanent regional steering committee, a temporary regional implementation committee and a permanent district committee. The principles of extended runs portions of Appendix 65 and Addendum 79 read as follows:

Principles of Extended Runs

1. Will not reduce the level of safety.
2. Will enhance transit time, reduce initial and terminal time and improve customer service reliability.

3. Employees will be provided accurate line-ups to allow sufficient rest prior to starting an extended run.
4. Employees will arrange to report for duty prepared to complete the assignment for which called.
5. At the crew ordering time extended run trains will be ready for the outbound crew to commence their duties which vary by terminal.
i.e.: power on train, brake test completed, train coupled, etc.
6. Extended run trains will normally operate as hook and haul, however will perform customer services when other train service is not practicable, i.e.:
pick up a bad order
set out or pick up
provisions of conductor only agreement will apply.
7. Conductors must be qualified to operate a locomotive when accompanied by a locomotive engineer.
8. Cab conditions of locomotives will be improved within defined time frames to provide a more suitable ergonomic environment.
9. Marshalling and customer service activity in extended run territory to be primarily performed by road switchers and wayfreights that will not be operated as extended runs.

It was agreed for these principles to be used, a set of measures and standards needed to be developed which tackled adherence to these principles. The measurement would be provided to the union and the company at regular intervals (monthly) and jointly reviewed on a regular basis. Both parties are committed to action when unacceptable deviation occurs.

The memoranda also include the following provision dealing with adjustments:

Crew sequencing and booking rest en route standards will be adjusted from time to time in keeping with extended run principles through the agreement of the Regional Steering Committee.

As a preliminary matter of procedure, the Company requested an initial ruling on the impact of the above quoted paragraph concerning adjustments. The Unions' first position is that adjustment in the booking rest en route standards relates to the hours of extended runs, and can only be implemented by the Company by agreement with the Unions through the Regional Steering Committee. In other words, the Unions' position is that the Company cannot make changes in the listed hours of extended runs as reflected in article 35.10(b) of agreement 4.3 and articles 28.5 and 60.14 of agreement 1.2 without the Unions' consent. It was therefore agreed that the parties should first argue the merits of that issue, as it would avoid the calling of substantial evidence should the Unions succeed on the initial question of interpretation.

The Company submits that the paragraph dealing with adjustments does not have the meaning suggested by the Unions. Through its witnesses it argued that what was contemplated in the provision in question was adjustments being made in respect of the sequencing of crews and the booking of rest en route taking into account such facts as the locations of railway crossings, seasonal conditions and such other elements as might impact the feasibility of employees being rescued on the road as they approach their maximum running time on extended runs.

The Company submits that the permissive provision for the increase of hours on runs is found in the note to articles 35.10(b), and 28.5(a) and that its prerogatives in that respect are circumscribed only by "... the principles set out in appendix 65" and "... the principles set out in Addendum 79". In the submission of counsel for the Company the principles so referred to are intended to be the nine points under the heading "Principles of Extended Runs". Consequently, the Company submits that it is not necessary to obtain the agreement of the Unions to implement any extension of the time on runs, to a maximum of twelve hours.

As a first position counsel for the Unions submits that the Company's interpretation entirely overlooks the paragraph governing the adjustment of booking rest en route standards. He submits that the language of that provision is clear, and mandates the prior agreement of the Regional Steering Committee before any such adjustment can be made. Counsel submits that the booking rest en route standards referred to within the paragraph in question must be taken to refer to the hours after which employees will be entitled to book rest. That interpretation is

supported by evidence provided by two of the Unions' representatives, UTU Vice-President J.W. Armstrong and BLE Local Chairman Bruce Willows.

Upon a review of the material the Arbitrator is persuaded that the submission of the Unions is more compelling. Firstly, from a purposive point of view, it appears doubtful to the Arbitrator that the running trades unions would both have agreed to extended runs with no meaningful contractual input on the time within which employees would have the right to book rest. To put the matter differently, if the Company's position is correct, it would have been available to the parties, who are sophisticated in the drafting of collective agreement provisions, to simply provide that the identified runs could operate to a maximum of twelve hours or less, in the discretion of the Company. That, however, is not the formulation of article 35.10(b) and article 28.5(a) of their respective collective agreements. The hours established for each of the runs are specific and particular to the locations identified. As is evident from the text of the note, the parties did contemplate the possibility of increasing runs to a maximum of twelve hours. Such an increase could not, however, be implemented unconditionally. By their agreement the adjustment, whether an increase or a decrease, must be based "on the principles set out" in Appendix 65 and Addendum 79.

It is true, as counsel for the Company points out, that one of the headings under Addendum 79 and Appendix 65 concerns principles of extended runs, listing nine factors to be taken into account. I am not persuaded, however, that the use of the word "principles" in the note is to be construed as narrowly as the Company argues. There are a number of other principles which plainly operate within the language of the document. In the Arbitrator's view, significantly for the purposes of this grievance, the fourth to last paragraph of the addendum and the appendix, dealing with the adjustment of booking rest en route standards, establishes two separate conditions before adjustments can be made: the first is consistency "... with extended run principles". The second is "... the agreement of the Regional Steering Committee."

I am satisfied that the reference to "booking rest en route standards" refers directly to the standard hours of the runs in question, as reflected in articles 35.10(b) and 28.5(a). In that regard, therefore, the standard for extended runs between Winnipeg and Fort Frances can only be understood to be ten hours. As the note to that paragraph indicates, that standard can be increased, subject to the provisions of appendix 65 and addendum 79. It is at that point that the annexed document establishes the requirement that any adjustment must be firstly in keeping with extended run principles, and secondly must be made through the agreement of the Regional Steering Committee. While the Company's position might properly appear to respect the need to stay within extended run principles, even accepting for the purposes of argument that that phrase does refer to the nine principles listed within addendum 65, the paragraph also clearly contains the separate condition of the agreement of the Regional Steering Committee. In the case at hand it is common ground that no such agreement was ever obtained for the change implemented on extended runs between Winnipeg and Fort Frances.

For these reasons the Arbitrator accepts the first position put forward by the Unions, and rejects the preliminary position argued by the Company. The ability of the Company to adjust the hours of extended runs is, by the provisions of addendum 79 and appendix 65, conditioned upon obtaining the consent of the Regional Steering Committee. As that was not done in the case at hand, the grievance must be allowed.

The Arbitrator finds and declares that the Company violated the collective agreements of both the United Transportation Union and the Brotherhood of Locomotive Engineers by unilaterally implementing an increase in the hours of extended runs between Winnipeg and Fort Frances. The Company is directed to cease and desist forthwith from the continued implementation of any extended hours beyond the ten hour standard established within article 35.10(b) of the collective agreement of the United Transportation Union and article 28.5 of the collective agreement of the Brotherhood of Locomotive Engineers. Nothing in this award prevents the Company from properly instituting the process of consultation and agreement contemplated within both collective agreements should it wish to pursue the issue. The Arbitrator retains jurisdiction in the event of any dispute between the parties concerning the interpretation or implementation of this award.

July 12, 2002

(signed) MICHEL G. PICHER
ARBITRATOR