

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3509

Heard in Montreal, Tuesday, 13 September 2005

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Appropriate remedy regarding the violation of articles 102 and 15 of collective agreement 4.3 involving train 114 in Winnipeg on May 3, 2005.

UNION'S STATEMENT OF ISSUE:

On May 3, 2003, the conductor on train 114 at the initial terminal of Winnipeg, Manitoba was required to assemble his train from three separate tracks, despite the fact that the assembled train could fit in one track. The conductor informed the Company officer that such actions were contrary to the collective agreement. The conductor was instructed to comply with the instructions.

The Company admits that those instructions and actions of the Company officer were contrary to and in violation of the collective agreement.

The only matter in dispute is an appropriate remedy, given the circumstances which are: **(1)** the Company has been order to comply with the requirements of the collective agreement as a result of ad hoc arbitration award 560; **(2)** The Company has committed to comply with the collective agreement through extensive meetings with the General Chairperson's office and, notably, with the Winnipeg UTU local chairpersons on February 25, 2005; **(3)** The Company has committed to comply with the requirements of the collective agreement through their letter to the Winnipeg UTU local chairpersons dates April 18, 2005; **(4)** the supervising Company officer was informed of the Company's commitments and that his instructions were contrary to the collective agreement prior to the work being performed, yet he still instructed the conductor to perform the work.

Given the foregoing the Union is of the position that the Company has been given every opportunity to live up to their commitments and the provisions of the collective agreement. They have been advised of and acknowledged these violations on many occasions, yet still chose to blatantly and indefensibly violate the collective agreement. As such, the Union is of the position that a substantial remedy is appropriate.

The Company is of the position that, even though they have previously committed to comply with the requirements of the collective agreement, this is the first occasion of a remedy grievance being specifically filed regarding this violation and feels that a lesser remedy is more appropriate.

FOR THE UNION:

(SGD.) B. R. BOECHLER
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

- K. Morris – Manager, Labour Relations, Edmonton
- J. Torchia – Director, Labour Relations, Edmonton
- B. Laidlaw – Manager, Labour Relations, Edmonton
- Wm. McGuire – Assistant Superintendent, Winnipeg

And on behalf of the Union:

- R. A. Hackl – Vice-General Chairperson, Edmonton
- B. R. Boechler – General Chairperson, Edmonton
- R. A. Beatty – General Chairperson, Sault Ste. Marie
- G. Ethier – Secretary-Treasurer, Montreal
- C. Little – Local Chairperson, Belleville

AWARD OF THE ARBITRATOR

For the reasons described in **CROA&DR 3507**, the Arbitrator directs that the Company pay the sum of \$100.00 to the affected conductor, and an equal amount to the members of any yard crew which would have normally performed the work which was improperly assigned to him, in violation of the Conductor-Only Agreement.

September 19, 2005

(signed) MICHEL G. PICHER
ARBITRATOR