CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3534

Heard in Montreal Wednesday, 14 December 2005

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

&

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Establishment and operation of Fort Frances, Ontario as an outpost terminal of Rainy River, Ontario

COMPANY'S STATEMENT OF ISSUE:

In 1995, the Company and the Unions in Western Canada negotiated a memorandum of agreement commonly referred to as the May 5th Agreement. The memorandum included, in part, the introduction of extended runs operations in Western Canada.

The Parties agreed to the implementation of thirteen (13) extended runs into Western Canada, one of which was the operation of through freight service between Winnipeg, Manitoba and Fort Frances, Ontario. It must be understood that the terminal in Rainy River was located between the terminals of Winnipeg and Fort Frances and extended run trains would now run through Rainy River. In order to address the fact the employees home terminalled at Rainy River would now be required to travel a distance of approximately 60 miles to report to work at Fort Frances, Ontario, the parties agreed that lump sum payment of $18,000 in lieu of all other payments would be offered to all employees who chose to remain living in Rainy River rather than relocate to Fort Frances.

The Unions contend that the lump sum payment of $18,000 was a benefit negotiated to address the costs associated with travel to Fort Frances for extended run trains only. The Unions also contend that all yard assignments being operated at Fort Frances are being operated at an outpost terminal from the home terminal of Rainy River. As such employees required to work these positions are entitled to the rights afforded under Addendum 38 and paragraph 79.11 of agreement 4.3 and Addendum 47 and article 67 of agreement 1.2.

The Company disagrees with the Unions' contentions claiming the lump sum payment of $18,000 paid in lieu of all other payments was full and final settlement of all other benefits for employees who chose to remain in Rainy River.

FOR THE COMPANY:

(SGD.) K. MORRIS
FOR: VICE-PRESIDENT, LABOUR RELATIONS

UNIONS' STATEMENT OF ISSUE:

Following a series of arbitration awards (CROA 3275 and 3325, and Ad Hoc 523) involving the operation of trains on the Sprague Subdivision, the Company reverted to a blended operation of single sub and extended runs trains, handling traffic between Winnipeg/Rainy River and Rainy River/Fort Frances and Winnipeg/Fort Frances.

After a while the Company, instead of calling road crews out of Rainy River, started called extra yards in Fort Frances on a daily basis (the frequency of these yards being called exceeded 100 extra yards per month, in some cases). These extra yards were, more often than not, being used to rescue extended run trains operating on the Sprague Sub. Yard engines were utilized rather than calling single subdivision crews out of Rainy River.

Regular yard engines have since been established in Fort Frances and are manned out of Rainy River.

The Unions contend that these yard jobs are being operated at an outpost location from the home terminal of Rainy River. As such, employees required to work these positions are subject to Addendum 38 and paragraph 79.11 of agreement 4.3, and Addendum 47 and article 67 of Agreement 1.2. The Unions initially filed grievances on August 27 and September 10, 2004 respectively. The Unions relied upon Addendums 65 and 79 of agreements 4.3 and 1.2 respectively. The Company did not agree with the Unions' position or claims.

The Company claims that Rainy River has been previously closed as a home terminal and that these yards are being operated out of the home terminal of Fort Frances and employees are not entitled to the benefits provided in the collective agreement regarding the operation of outpost terminals.

The UTU filed an additional grievance dated August 4, 2005. The Company responded on September 28, 2005 disagreeing with the Unions' position deeming the claims for accommodation under Addendum 38 and travel expenses under article 79.11 as unfounded and without merit.

The Company states that pursuant to the understanding reached May 10, 1995 entitling employees home stationed at Rainy River as of May 5, 1995 to a lump sum payment of $18,000, the work was transferred to the terminal of Fort Frances and the $18,000 was in lieu of all other payments associated with the requirement of employees at Rainy River now being required to report for work at Fort Frances and who chose to remain living in Rainy River.

The Company also states that events after the May 5, 1995 agreement (i.e. 1996) preclude any entitlement to additional claims for compensation. The Company says that since February 1997 employees residing in Rainy River have been called upon to protect vacancies at

Fort Frances in yard services as relief for regular yard assignments or extra yard assignments without any additional payments or benefits.

The Company submits that since June 1996 it has not compensated employees travel expenses or provided accommodations notwithstanding the fact hundreds of extra yard assignments have been ordered at Fort Frances and manned by employees residing in Rainy River.

The Company submits that employees are not entitled to either claim based on lump sum payments made in 1996 to all employees residing in Rainy River.

The Union's contends the lump sum payment was a benefit negotiated to address the costs associated with travel to Fort Frances for extended run trains only. The Company disagrees, stating the Unions have failed to demonstrate or provide any evidence that would support such a position. Conversely, the Company has provided evidence that employees residing at Rainy River have protected work in yard services at Fort Frances since 1997 without any form of additional payment. Moreover, the language in the understanding dated May 10, 1995 is clear and unequivocal and supports the Company's position. The Company submits it negotiated in good faith and paid a lump sum payment of $18,000 in lieu of all other payments and there is no justification for additional compensation.

Based on the foregoing, the Company respectfully declines the grievance and denies the request for additional compensation and/or accommodation at Fort Frances.

FOR THE UTU:	**FOR THE TCRC:**
(SGD.) B. BOECHLER	**(SGD.) D. SHEWCHUK**
GENERAL CHAIRPERSON	**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
B. Laidlaw	– Manager, Labour Relations, Winnipeg
R. B. Smith	– Assistant Superintendent, Transportation, Winnipeg

And on behalf of the Union:

M. Church	– Counsel, Toronto
B. Boechler	– General Chairperson, UTU, Edmonton
R. Hackl	– Vice-General Chairperson, UTU, Edmonton
J. W. Armstrong	– Vice-President, UTU, Edmonton
R. Armstrong	– Local Chairperson, UTU, Rainy River
B. Willows	– Vice-General Chairman, TCRC, Edmonton

AWARD OF THE ARBITRATOR

While the evidence and arguments before the Arbitrator in this case are extensive, the issue is relatively narrow. It concerns whether the Unions' members who reside at Rainy River are entitled to a travel allowance when they are called to work in yard service at Fort Frances, Ontario.

Central to the dispute is the meaning of a special agreement negotiated between the parties dated May 10, 1995. That agreement followed the collective agreement resulting from the mediation/arbitration process under then Judge George W. Adams, a process which resulted in the initiation of extended runs in Western Canada. That initiative meant, in part, that extended run trains would operate between Winnipeg, Manitoba and Fort Frances, essentially by-passing Rainy River, as well as between Fort Frances and Thunder Bay. It should be noted that employees at Rainy River were then offered a number of protections, including early retirement, deferred separation or bridging, relocation benefits and severance payments, as reflected in a further memorandum of agreement dated June 21, 1996.

Because Rainy River is relatively close to Fort Frances it became apparent that the running trades employees of both Unions at Rainy River preferred to receive a lump sum payment rather than relocate their homes and families to Fort Frances. The result was the agreement of May 10, 1995 which reads as follows:

> Gentlemen:
>
> During negotiations which culminated in an agreement in Toronto in May 1995, an understanding was reached concerning Rainy River employees.

> Employees whose home terminal was Rainy River as of May 5, 1995, and who choose to remain at time of implementation of extended runs, will be provided a lump sum payment of $18,000.00 in lieu of all other payments for employees who are home terminalled at Rainy River and must report for work at Fort Frances, Ontario, with the implementation of extended runs.
>
> (sgd.) M. Healey
> For: Assistant Vice-President, Labour Relations
>
> I concur:
> (sgd.) J. W. Armstrong — General Chairperson
> (sgd.) Wayne A. Wright — General Chairman

The Unions take the position that the above agreement is limited in its purpose and application. They maintain that the $18,000 payment was provided in exchange for Rainy River employees travelling to Fort Frances twice weekly to operate extended run trains in road service. They submit, however, that the agreement does not relieve the Company from paying normal travel allowance for employees called from Rainy River to Fort Frances in yard service, an event which could happen more than twice weekly. It appears that the issue became more acute in recent years with the increase in yard operations at and out of Fort Frances, with a resulting increase in yard assignments being given to running trades employees who remain home terminalled at Rainy River. The Unions' position is that employees called from Rainy River to yard service at Fort Frances are entitled to the travel allowance which would be payable to employees required to drive to an outpost terminal to perform yard work. In that regard the Union representing conductors and trainpersons refers the Arbitrator to Addendum 38 and paragraph 79.11 of collective agreement 4.3, and the Union representing locomotive engineers to Addendum 47 and article 67 of collective agreement 1.2. Further reference is also made to Addendums 65 and 79 the two agreements, respectively.

The Company has denied the claims, apparently first put forward by the Unions on August 27 and September 10, 2004. The position of the Company is that the agreement of May 10, 1995, reproduced above, is in full and final settlement of all benefits for employees who, in 1995, elected to remain at Rainy River in the knowledge that they would be called to work at Fort Frances by reason of the introduction of extended run train operations. The Company's representative stresses the wording of the agreement that the lump sum payment of $18,000 is to be "in lieu of all other payments for employees who are home terminalled at Rainy River and must report for work at Fort Frances, Ontario, with the implementation of extended runs." As the Company would have it, the agreement operated without apparent conflict or concern for a good number of years, with Fort Frances yard assignments being given to Rainy River based employees from the very inception of extended runs between Winnipeg and Fort Frances as well as Fort Frances and Thunder Bay. While it appears that for a time certain supervisors of the Company took the position the grievance must fail because Rainy River was no longer a home terminal, the Company's representative admits that that position was taken in error. The Company stresses, however, that it can rely upon the language and intent of the agreement, which its representative stresses was to be in full and final compensation for employees who chose to retain their residence at Rainy River as of 1995.

I turn to consider the merits of this dispute. What is the intention of the agreement of May 10, 1995? At the outset the Arbitrator has some difficulty with the Unions' argument that the lump sum payment of $18,000 to the employees at Rainy River, for a total sum in excess of $1,000,000 at the time, was merely in exchange for employees at Rainy River being called twice weekly in road service out of Fort Frances in extended runs.

To some extent, the Unions rely on their own notes of a statement apparently made by Company representative Greg Pichette, stating that the $18,000 payment was in exchange for twice weekly service out of Fort Frances. Firstly, reference to extrinsic evidence of that kind would be relevant only if there as some ambiguity in the language of the agreement of May 10, 1995. I find no such ambiguity. In the Arbitrator's view, the document cannot be fairly construed, as the Union would have it, to say that the $18,000 payment is in exchange for operating extended run trains out of Fort Frances twice weekly. To the contrary, the language of the agreement is clear that the payment is occasioned by the fact that employees will be required to report for work at Fort Frances "… with the implementation of extended runs." In my view that latter phrase means, effect, "… upon the commencement of the implementation of extended runs." It is a tortured interpretation, to say the least, to suggest that the language reflects a lump sum payment in exchange for twice weekly road service in extended runs from Fort Frances. On the contrary, the letter of May 10, 1995 refers to the work that Rainy River employees will be required to report for at Fort Frances from and after the time extended runs are implemented. On that basis alone, the minutes of meetings taken by one of the Unions, attributing statements to a Company supervisor, would not be properly admissible to interpret this document. Moreover, even if the Unions are correct in their view of the thoughts of Mr. Pichette, it is the intention of the document, and not the view expressed in a single comment of one Company representative, which must be the basis of its legal meaning.

Alternatively, if the Unions are correct, and extrinsic evidence is to be looked to, that evidence is overwhelmingly in favour of the interpretation of the Company. The unchallenged record before the Arbitrator confirms that following the introduction of extended runs, between 1996 and 2005, there have been some 4,663 yard assignments at Fort Frances. It does not appears disputed that, given the almost negligible number of running trades employees home

terminalled at Fort Frances, better than 90% of those assignments would have been performed by locomotive engineers and conductors home terminalled at Rainy River. What is the Arbitrator to conclude from the fact that, for example, in 1997 there were 418 yard assignments, better than one per day, with no apparent protest or grievance from either Union and no claim for travel allowance? The same situation continued in each and every one of the ensuing years. The record discloses that in the eight year period before the filing of the grievance there was a yearly average of 349 assignments at Fort Frances involving either road switchers, regular yard assignments or extra yard assignments, again a figure close to once each day. During all of that time no travel allowance was paid and no grievance was filed by either Union.

The bargaining agents before the Arbitrator are astute to protect their rights. I have little doubt that if the intention of the agreements of 1995 was that employees assigned in anything other than extended run road service out of Fort Frances would be entitled to travel allowance for working a yard assignment at or out of Fort Frances, those claims would have been made and assiduously pursued. Nothing in fact was done by way of protest. Moreover, against the background of that practice, the collective agreements of both Unions were renewed without change during the same period. These facts lead to the compelling inference that the parties always shared the interpretation of the letter of May 10, 1995 now held by the Company. It is clear from the language of the memorandum of agreement of June 21, 1996 that the lump sum payment of $18,000 was part of an overall package to minimize the adverse effects of the material change relating to the introduction of extended run trains.

It may well be that at the time the agreement of 1995 was made the amount of yard assignments which might be required at Fort Frances was underestimated. Indeed, it does not appear disputed that many yard assignments at Fort Frances essentially involve using yard

engines to rescue extended run trains which cannot get over the road in the requisite time. It would also appear, as is evident from the figures tabled at the arbitration, that there has been a marked increase in yard assignments from and after 2004, having largely to do with changes in operations. On what basis can a board of arbitration conclude that these unforeseen or changed circumstances somehow vitiate the agreement which the parties made in categorical terms in 1995? Clearly, they then contemplated that employees home terminalled at Rainy River would be called work at Fort Frances and, as the record indicates, would be frequently called to work from the outset of extended runs, to do both regular and extra yard assignments. While it might have been open to the Unions to include a re-opener clause in the agreement in the event of any substantial change of circumstance, these parties, sophisticated in the negotiation of collective bargaining documents, chose not to include any such condition.

Nor is the Arbitrator impressed by the Unions' reliance on documentation related to mixed extended run and single subdivision operations on the Winnipeg to Thunder Bay corridor, as evolved in 2002. A letter from the Company to the general chairpersons of both Unions dated October 3, 2002 contains the following entry:

> Employees who have home terminalled at Fort Frances after 1995, and who are required to report to Rainy River when called in single sub. service, will be provided a travel allowance equivalent to one hour at through freight rates of pay for each way, reporting to and returning from Rainy River, Ontario.

The foregoing provision does nothing more than reflect the normal operation of the collective agreements in a situation obviously not dealt with in the terms of a special agreement such as the memorandum of agreement of May 10, 1995. The fact that the Company honours the collective agreement with respect to employees home terminalled at Fort Frances required to travel to Rainy River for their assignments is simply not instructive to the instant dispute.

In the result, the Arbitrator can find no violation of the collective agreements or of the terms of the special agreement negotiated between the parties on May 10, 1995 on the facts disclosed. The grievance must therefore be dismissed.

December 20, 2005

(signed) MICHEL G. PICHER
ARBITRATOR