

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

CASE NO. 3560

Heard in Montreal Thursday, 11 May 2006

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The application of Clause 10.1 of the Pilotless Detour Agreement in the circumstances where CNR running trades employees within the CNR corridor are on legal strike.

JOINT STATEMENT OF ISSUE:

On November 28, 1997, the parties signed the Pilotless Detour Agreement. Clause 10.1 reflects the following: "10.1 CPR employees will not be required to operate pilotless detour trains in the Canadian National Railway corridor in the event that CNR employees are on a legal strike unless arrangements are made in advance and agreed upon by the General Chairs or their designates."

In November 1999, the Company commenced a Directional Running pilot in the Fraser Canyon corridor between Nepa/Coho and the Matsqui Junction. This involved running CPR and CNR trains westward on CNR track over the Yale and Ashcroft subdivisions and eastward on CPR track over the Cascade and Thompson Subdivisions.

On May 17, 2005 the parties discussed the possibility of strike affecting the locomotive engineers at CNR, including the relevant CNR corridor, and during those discussions it became apparent that there was a dispute as to the application of Clause 10.1. The parties agreed to proceed directly to CROA&DR for final and binding resolution of the dispute.

The Union contends that the directional pilot was undertaken with the Union's concurrence in accordance with item 10.1 of the Pilotless Detour Agreement. The Union's position is that the Pilotless Detour Agreement was negotiated in good faith, it forms the basis of further agreements/understandings associated with it involving train operations within the relevant corridor and the terms of the Pilotless Detour Agreement, as mutually amended from time to time, are in effect. [sic] The Union contends that clause 10.1 applies in the event of a legal strike by running trades employees at CNR and that in the event of such a strike CPR running trades employees would not be required to operate on CNR track within the CNR corridor without advance agreement by the Union.

The Company contends that the Pilotless Detour Agreement does not apply to any operations outside of its scope and specifically does not apply to directional running operations between Nepo/Coho and Matsqui Junction. Moreover, the Company also contends that if the Pilotless Detour Agreement does apply, Clause 10.1 does not apply to trains operating directionally between Nepa/Coho and Matsqui Junction as these are not the purpose of the clause was meant to restrict CRP crews from running CNR trains on CNR track in the case of a labour dispute and not to restrict CPR crews form running CPR trains on CNR track.

FOR THE UNION:

(SGD.) D. ABLE
GENERAL CHAIRMAN

(SGD.) D. FINNISON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. COPPING
FOR: GENERAL MANAGER, OPERATIONS

There appeared on behalf of the Company:

M. Shannon	– Counsel, Calgary
M. G. DeGirolamo	– Assistant Vice-President, Industrial Relations (ret'd)
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary

And on behalf of the Union:

M. Church	– Counsel, Toronto
D. Able	– General Chairman, Calgary
D. Finnson	– General Chairman, Calgary
G. Ransom	– Local Chairman, Port Coquitlam

AWARD OF THE ARBITRATOR

At issue in this grievance is the status of the provisions of a memorandum of agreement made between the Company and the Union's predecessor, the Canadian Council of Railway Operating Unions (hereinafter the "Council") dated November 28, 1997. Referred to as the Pilotless Detour Agreement, the purpose of the memorandum was to permit the employees of both CNR and CPR to operate, without pilots, on the track of the other railway in the Thompson/Fraser Valley corridor between Kamloops and Vancouver. Significant provisions of that memorandum, for the purposes of this grievance, include the following:

1.0 Purpose of Agreement

This agreement will enable training, qualification and administration of employees operating pilotless detour trains in the Canadian National Railway corridor between Kamloops and Vancouver Terminal.

The agreement is to permit the effective use of employees and equipment through the elimination of pilots when derailments, line blockages and track programs create the need to detour over Canadian National Railway. There may be other instances when detouring can take place provided mutual agreement is reached by the Companies and the Council prior to such detouring.

...

8.6 Other than as provided in Clause 4.4 above, CPR employees will not be required to relieve CNR crews enroute nor will they be required to operate CNR trains over all or a portion of a Subdivision.

10.0 Labour Disruption

10.1 CPR employees will not be required to operate pilotless detour trains in the Canadian National Railway corridor in the event that CNR employees are on a legal strike unless arrangements are made in advance and agreed upon by the General Chairs or their designates.

While no specific incident has yet occurred, to avoid any uncertainty in the event of a work stoppage by legal strike at CN, the parties seek clarification from this Office as to the applicability of article 10.1.

The motive underlying the memorandum, and the introduction of pilotless operations on the territory in question is touched upon in a letter dated June 12, 1997 sent to a number of union officers in both of the running trades, the maintenance of way and signal and communications over the signature of Director, Labour Relations, Rick Wilson. It reads as follows:

Dear Sirs,

As you may know, there have been reviews from time to time since 1932 on development of joint use of the CP and CN lines between Kamloops and the West Coast Port Terminals.

Now, the increasing demands of our customers, work programs, unplanned outages and the competitive situation with other Pacific Northwest Ports has required us to revisit this.

We have had initial meetings between CP and CN and have decided to explore cooperative arrangements for operations. Initially, in the short term (one year), this would involve increased reciprocal running on each the lines of each railway. And in the longer term, some form of directional running would be expected to emerge. The objective would be to reduce the time that is consumed by meet and pass delay and to provide additional routing options for the benefit of both railways, our employees and our port customers.

It is planned for a greater integration of services to port terminals on the West Coast to also result.

For any of us to individually realize benefit however will require our collective unity of purpose and will. We think this will be of interest to yourselves and your membership. We would therefore like to brief you and discuss current thinking on this issue at our next meeting.

Yours truly,
(signed) Rick Wilson
Director, Labour Relations

The record before the Arbitrator discloses that on December 1, 1997 the Company entered into a commercial agreement with CN. Titled the "CP/CN Canyon Management Detour Protocol", its preamble cites the following purpose:

Preamble

The purpose of this Protocol [is] to simplify and clarify the process by which the Canadian Pacific Railway Company and the Canadian National Railway Company each plan and execute the detouring of trains over the lines of the other, in the Thompson/Fraser Canyon corridor between Kamloops and Coquitlam/Thornton Yard, British Columbia.

It is the intention of this Protocol that the simplified train detouring process will facilitate a prompt recovery from line discontinuation and/or mitigate line congestion caused by planned Engineering Work Programs. This will be achieved through a simplification of the detour process itself, the guarantee of a fixed level of detour capacity and enhanced inter-Company communication and coordination.

It is not the intention of the Protocol that guaranteed, fixed detour capacity be used for the purpose of providing incremental revenue generating capacity.

This document is supplementary to the existing CP/CN detour agreement of 1981 and amending letters. It may be cancelled by either Railway on giving sixty (60) days written notice to the other Railway.

A review of the language of the Protocol makes it clear that what is contemplated is detour situations occasioned by emergencies or the constraints of engineering work blocks. That is reflected in the following provision:

1.1 Detour Situations

Upon request of the Railway experiencing a service disruption in the Canyon corridor, trains will be detoured over the other Railway under circumstances such as the following:

- a) Derailment, slide, washout or other similar incident that disrupts normal flow of traffic;
- b) Planned or emergent Engineering work blocks.

Detours may continue after the incident or work block has ended, by mutual agreement, until the backlog of traffic is cleared.

Detours may also be arranged under mutual agreement between the Network Management Centre (NMC) of CP and Operations Management Centre (OMC) of CN for the following reasons:

- a) Routing CP trains to Thornton Yard or CN trains to Coquitlam, that would normally be interchanged to the other Railway at Sapperton;
- b) Maintaining crew familiarity and qualification to operate on both routes.

In the case of example a) above, the arrival time of a CP train at Thornton Yard, or of a CN train at Coquitlam, will be the deemed arrival time at Sapperton for interchange purposes.

Detours arranged under this paragraph will be done as much as possible on a mutual basis – e.g. each Railway will accept the same number of detours as the other.

As can be seen from the foregoing, the main thrust of the detour situations contemplated has to do with emergent situations or the disruption of engineering work blocks. While there is some contemplation of detours being arranged on an *ad hoc*

basis in other circumstances, on its face the agreement does not reflect full blown directional running in the sense contemplated in Mr. Wilson's letter. It does not appear disputed, however, that the overall tenor of communications surrounding the agreement did contemplate the eventual emergence of directional running, whereby the trains of CN and CP could both travel in one direction on CN lines in the corridor, and in the opposite direction on CP lines, thereby enhancing the productivity and performance of both railways.

In November of 1999 the Company and CN agreed to initiate a directional pilot program in the west coast corridor. With the Union's agreement, directional running was introduced on a pilot project basis, initially for two weeks and thereafter it was extended for a longer period into early 2000. During the period the Company's Assistant Vice-President, Labour Relations, Mr. Mike DeGirolamo wrote to the General Chairmen of the running trades unions with respect to the Pilotless Detour Agreement and the emerging reality of directional running. His letter of December 17, 1999 reads, in part, as follows:

Dear Sirs,

This is to confirm our discussion earlier today regarding the CPR/CNR directional pilot currently in operation between Nepa/Coho and CPR Matsqui Junction. Originally scheduled for a duration of two weeks which was meant to terminate on December 4th, success from an operations and employee perspective has resulted in an extension to December 23rd, with directional operations tentatively scheduled to resume January 9, 2000.

As you are aware, the directional pilot was undertaken with your concurrence in accordance with item 1.0 of our Pilotless Detouring Agreement that enables pilotless detouring on Canadian National Railway between Kamloops and Vancouver Terminal. We obviously appreciate your cooperation in that regard and based on success to date, we trust you will endorse the extension into year 2000.

Notwithstanding that the Pilotless Detouring Agreement does provide for detouring to take place for reasons other than derailments, line blockages and track programs, when it was struck in 1997 we did not contemplate directional running and how it would impact Section 4.0 of the agreement pertaining to Road Familiarization Trips. Requiring five round trips to qualify on the CNR Ashcroft or Yale Subdivisions, with directional operations in place our employees are unable to secure bi-directional qualification as they only have the opportunity to operate westbound trains. At present, without bi-directional qualification, we continue to provide pilots on westbound trains even though employees have met and/or exceeded the five tours (directional) over the Subdivision in question.

At this point we anticipate a decision on permanence early in the New Year. If both corporations elect to strike a permanent arrangement, we will obviously want to tweak the Pilotless Detouring Agreement to better address the unique characteristics of directional running. However, to make better use of resources during the interim we would like to secure the ability for directional qualification.

If you concur, commencing immediately we will consider any employee who makes seven westbound trips (up to seven at the employee's discretion) between the aforementioned points on the Ashcroft or Yale Subdivisions to be directionally qualified and available for work on that Subdivision. Subsequent bi-directional qualification will be completed when a directionally qualified employee completes two trips in the opposing direction.

With regard to locomotive engineers who, because of insufficient seniority, compete their road familiarization trips as conductors ...

The General Chairmen of both Unions, then under the umbrella of the CCROU, signed their concurrence to Mr. DeGirolamo's letter.

It is necessary to highlight a particular feature of the directional running which subsequently emerged. It does not appear disputed that directional running is a concept that is found elsewhere in agreements between railways in North America, generally to facilitate their operations to the mutual advantage to both roads involved. What is unique in the Fraser Valley directional running arrangement, however, is that not only do the trains of both CN and CP operate eastward and westward on each other's lines, but the crews of each company will, on occasion, handle the trains of the other

company over the territory in question. In other words, in the corridor directional running has matured into a system of co-production.

Through the year 2000 the parties did not have any success in negotiating an agreement which would replace the Pilotless Detour Agreement. Late in the year, when the Unions' general chairmen indicated that they would revoke the Unions' assent to directional running, a further exchange of correspondence resulted. In a letter dated December 6, 2000 Mr. DeGirolamo expressed the view that the Pilotless Detour Agreement of November 28, 1997 was not made in anticipation of directional running and, in any event, as matters had evolved its status was "questionable". According to counsel for the Union, in the face of Mr. DeGirolamo's letter the Unions essentially agreed that no replacement agreement was necessary, although it obviously did not take the view that the Pilotless Detour Agreement was no longer in effect.

As matters evolved there were objective indications of the Company's own view that the Pilotless Detour Agreement continued to operate. For example, on September 2002, in the context of familiarizing CPR employees with the territory of CN within Thornton Yard, an effective extension of directional running, Manager, Road Operations M.S. Schille wrote a general bulletin for running trades and mechanical services employees which contained the following comment:

Refresher trips will be applied as per section 9 of the CN/CP Pilotless Detouring Agreement.

The record also reflects that local agreements were made between the Company's service area manager at Vancouver and the local chairpersons for both running trades. The first involves a letter of understanding concerning the operation of trains between Boston Bar and Coquitlam/Thornton Yard (undated) while the second, dated May 20, 2004 is in the nature of a revision of the first agreement. It allows CN grain trains destined to the South Shore to be operated by CP crews as well as CN sulphur trains, among other things. Both letters of understanding cite item 8.6 of the Pilotless Detour Agreement as being relaxed for the purposes of the arrangements in question.

Significantly, a letter of understanding was executed by Mr. DeGirolamo, as well as by the General Chairmen of both running trades of the Union on November 13, 2004. The letter of understanding concerned expanding the territory for crew change points, in ongoing facilitation of directional running. That letter of understanding reads, in part, as follows:

With the resolve of the Boston Bar Terminal grievance, concerning crews being made to operate trains off their assigned subdivision, the TCRC agrees to expand the CNCP Pilotless Detour Agreement and such agreements/ understandings associated with it to include the Expanded Crew Change Point provisions of the collective agreement.

At issue in this grievance is the operation of article 10 of the Pilotless Detour Agreement. When CAW non-operating employees engaged in a strike against CN in January of 2004 the parties had cause to consider the application of Clause 10 of the Pilotless Detour Agreement, the terms of which specifically protected CP employees from operating trains without a pilot in a detour situation in the CN corridor in the event

CN employees were on legal strike. In response to a question about that issue put to him by Union Local Chairman Gerry Ranson, Vancouver Supervisor Rob Wier responded by email stating, in part:

Jason Copping [Director of Labour Relations for the Company] spoke with Dennis [Curtis, then General Chairman for the Union] and they are in agreement that the provision dealt with a work stoppage by Running Trades. However, there will be further consultation should CN reach a strike situation to first determine intent [sic] to continue to operate and then how we would handle the situation.

It does not appear disputed that the CAW strike did not impact directional running and co-production operations in the corridor. It is also apparent that the threat of a CN running trades strike in early 2005 was, in the end, only that, and the condition of a running trades' strike on either road has not yet materialized. Nevertheless, the threat of a CN strike in May of 2005 brought to the fore the issue which is now before the Arbitrator. That is well reflected in a letter sent to the Union's General Chairmen on May 17, 2005 by then Assistant Vice-President Mike DeGirolamo. His letter reads as follows:

As discussed, this letter is to confirm the Company's position pertaining to the CPR's contingency plan in the event of a strike by the Teamsters Canada Rail Conference (TCRC) at Canadian National Railway, particularly as it applies to the Fraser Canyon.

Recognizing the sensitivities associated with a strike of operating employees at another railway with which we interact, please be advised that in the event of a strike, CPR will not solicit additional CNR traffic nor will we operate CNR locomotives or trains.

In regards to the Fraser Canyon Directional Running Zone (DRZ), in the event of a strike CPR cannot legally unilaterally suspend the commercial agreement. We must meet our contractual obligations and allow CNR the opportunity to run on our track. As such both railways will continue to run westward on CNR track and eastward on CPR track as per the current operations and as was done during the CNR-CAW strike last year and the CPR-RCTC strike the year previously.

I understand that locally, reference has been made to clause 10.1 of the 1997 Pilotless Detour Agreement suggesting that arrangements must be made for CPR to operate on its own track in the Fraser Canyon corridor in the event of a strike at CNR. As previously discussed, it is the Company's position that this

agreement does not apply in the current circumstance. The Pilotless Detour agreement was reached in the context of bi-directional operations to detour CPR trains over CNR track without pilots during line outages and track programs, not in the context of directional running which was not contemplated in 1997. Moreover, the intent of clause 10.1 was clearly to ensure that CPR crews would not handle CNR trains or traffic in the event of a strike at CNR, not to restrict CPR crews from handling our own trains. To confirm and as stated above, in the event of a strike, CPR will not solicit CNR traffic nor [will we] operate CNR locomotives or trains.

That said, recognizing your concerns, please be advised that in the event of a strike, we will suspend all co-production trains (CP crews taking CN trains and CN crews taking CP trains at Boston Bar) as well as discontinue operating CPR trains in and out of Thornton yard.

We are hopeful that the TCRC and CNR will be able to resolve their differences and that such a disagreement will not negatively impact CPR or our employees., as this issue does not involve CPR nor our employees, we trust that you will assist in ensure [sic] that we do not become entangled in this dispute.

Should there be any concerns, do not hesitate to contact me.

Following the position taken by the Company as reflected in Mr. DeGirolamo's letter, the parties agreed to submit the issue to this Office for interpretation, as a means of avoiding any future difficulties. That is how the matter has come to be before the Arbitrator.

I turn to consider the merits of the dispute. After careful consideration, I am compelled to conclude that the words of the Pilotless Detour Agreement support the position of the Company. Both that agreement and the commercial agreement with CN speak specifically and only to temporary detours by reason of line blockages and scheduled or unscheduled track and road repairs. So understood, the agreement indicates that the parties did not contemplate its application in the broader context of directional running and co-production. It is on that basis that the Company stresses that the agreement remained in place, that nothing was raised at the bargaining table by the

Union through the renewal of the collective agreement and that, in the end, the employer required no agreement on the part of the Union to move into full directional running and co-production, as has occurred, apparently without grievance by the bargaining agent.

To be sure, in the statement of its purpose, the memorandum of agreement of November 28, 1997 expressly contemplates "There may be other instances where detouring can take place provided mutual agreement is reached by the Companies and the Council prior to such detouring." On its face that statement is sufficiently broad to contemplate the expectation of eventual directional running. Indeed, a close review of the correspondence between the parties which surrounded the initial Pilotless Detour Agreement confirms that at the time of their arrangement the parties not only considered directional running in the future to be possible but, to utilize the word used by Mr. Wilson in his letter of June 12, 1997, it was "expected". As he elaborated: " The objective would be to reduce the time that is consumed by meet and pass delay and to provide additional routing options for the benefit of both railways, our employees and our port customers."

The Arbitrator is satisfied that from its inception the Pilotless Detour Agreement was made in contemplation of the emergence of directional running between CP and CN in the Kamloops/Vancouver corridor. That, however, does not of itself extend the application of the Pilotless Detour Agreement to a wholly different set of facts, namely directional running. It is important to appreciate that, at law, the intention to possibly make an agreement is not in itself an enforceable agreement.

The Arbitrator is compelled to interpret and apply the Pilotless Detour Agreement as it is clearly expressed. By its own terms, it refers only to traditional detour situations, typically occasioned by "derailments, line blockages and track programs ...". It does not address or contemplate directional running, an entirely different matter. While both parties may have considered or anticipated directional running at some time in the future, at the time of the agreement it was not included in the language which they used in formulating the agreement.

As counsel for the Company stresses, the Company does not need or seek the agreement of the Union with respect to securing or exercising running rights with other railways, including directional running as implemented in the Thompson/Fraser Valley. No specific agreement was made to govern directional running at that location. On what basis, therefore, can the Union assert the terms of the Pilotless Detour Agreement to apply to directional running in the event of a CN work stoppage? In that regard it is significant that article 10.1 entitled "Labour Disruption" speaks only to the exemption from the requirement "... to operate pilotless detour trains in the Canadian National Railway corridor in the event that CNR employees are on a legal strike ...". The Union would, in effect, ask the Arbitrator to apply the foregoing language to directional running.

With respect, I cannot. Directional running is not, in my view, properly characterized as a "detour" in the sense contemplated by the Pilotless Detour Agreement of November 28, 1997. Employees engaged in directional running are so

assigned pursuant to the management prerogative of the Company, unfettered by any provision of the collective agreement. To the extent that employees are regularly directed and assigned to operate over the lines of CN as part of their normal assignment, there can be no issue of those employees being improperly assigned off their subdivision, contrary to the collective agreement. It would require clear and unequivocal language within the collective agreement for the Union to establish that employees cannot be assigned to run over the road of another railway as part of their regular assignment. No such language is pleaded in the case at hand.

Regularly scheduled directional running is not a detour, at least as that term is intended within the Pilotless Detour Agreement. In the result, should the Union wish to have the terms of article 10.1 of that agreement apply to the very different circumstances of directional running, it must negotiate collective agreement language that will achieved that result. As yet, no such language is to be found within the collective agreement or any other agreement between the parties.

For all of the foregoing reasons the grievance must be dismissed.

July 13, 2006

(signed) MICHEL G. PICHER
ARBITRATOR