

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

CASE NO. 3571

Edmonton, Wednesday, 12 July 2006

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The alleged violation of Addendum 72, Addendum 72B and Addendum 72C of agreement 1.2 regarding the Company's decision to change the process first aid re-certification training.

COMPANY'S STATEMENT OF ISSUE:

In 1992, the Company introduced a one-day first aid training course for running trades employees, conducted by St. John's Ambulance, to be taken in conjunction with an employee's periodic rules training for re-qualification under the Railway Employee Qualification Standards Regulation (QSOC), all of which was scheduled in advance by the Company.

Between March 15 and April 30, 2006 at Saskatoon, the Company changed the process whereby re-certification training in first aid is taken separately from the QSOC training. During this period Saskatoon employees were required to schedule their own first aid training session directly with St. John's Ambulance, to be taken between trips or on a rest day where possible. The Company plans to implement this change in process on a system-wide basis for all running trades employees in Western Canada in the Fall of 2006.

The Union grieved the implementing of the new scheduling process for first aid re-certification claiming that the Company is in violation of agreement 1.2, in that: **(a)** The longstanding intent and application of Addenda 72, 72B and 72C of agreement 1.2 has been for the Company to provide first aid training in conjunction with QSOC training; **(b)** The Company's expectation that employees schedule their first aid training between trips or on days off is unfair and unrealistic.

The Union requests that the Company cease and desist with the new scheduling process and revert to the process previously in effect for first aid re-certification. The Union also requests that any employees who have been negatively impacted by this new initiative be made whole.

The Company disagrees with the Union's position.

FOR THE COMPANY:

(SGD.) B. LAIDLAW
MANAGER, LABOUR RELATIONS

UNION'S STATEMENT OF ISSUE:

Locomotive engineers are required to be instructed and certified in first aid as prescribed by the "On Board Trains Occupational Safety and Health Regulations" which came into effect in April 1987. Since February 1992, the Company has provided first aid training in a CN sponsored workshop on Company time in conjunction with Railway Employee Qualification Standards Regulations (QSOC) training.

On March 15, 2006, the Company initiated a trial project whereby employees living in Saskatoon, Biggar, Humboldt and North Battleford, Saskatchewan, were required to schedule their own first aid session directly with St. John Ambulance, to be taken between trips or on a rest day. The Company plans to implement this change in process on a system-wide basis for all running trade employees in Western Canada in the Fall of 2006.

The longstanding intent and application of Addenda 72, 72B and 72C of agreement 1.2 has been for the Company to arrange and schedule first aid training for employees in a CN sponsored workshop on Company time in conjunction with QSOC training.

The Union received formal notification of the Company's first aid pilot project on March 13, 2006, two days before the project commenced. This is contrary to the longstanding practice of consultation and negotiation with the Union prior to any contemplated changes in the training course.

The Company issued a notice to the TCRC and UTU members immediately prior to the implementation of the pilot project. The notice advised employees that they were not to book off to attend the first aid course that they would be expected to successfully complete without losing work. The Company's decree is in violation of the process outlined in Addendum 72 and the payment provisions outlined in Addendum 72C.

The Union requests that the Company cease and desist with this new initiative and revert to the practice previously in effect for first aid training as outlined in Addenda 72, 72B and 72C. In the alternative, the Union submits that the Company is estopped from changing its practice with regard to first aid training for locomotive engineers.

The Company disagrees with the Union's position.

FOR THE UNION:

(SGD.) D. SHEWCHUK
GENERAL CHAIRMAN

There appeared on behalf of the Company:

- B. Laidlaw – Manager, Labour Relations, Winnipeg
- J. Torchia – Sr. Manager, Labour Relations, Edmonton
- D. Van Cauwenbergh – Sr. Manager, Labour Relations, Toronto
- J. Whelan – Manager, Operating Practices – Western Canada
- K. Morris – Manager, Labour Relations, Edmonton

And on behalf of the Union:

- B. Willows – Vice-General Chairman, Edmonton
- D. J. Shewchuk – General Chairman, Edmonton
- T. Markewich – Vice-General Chairman, Thunder Bay

AWARD OF THE ARBITRATOR

Addendum No. 72 of the collective agreement deals with the Company's obligation toward employees required to undertake first aid training. It is not disputed that that requirement arises under federal regulations, and in particular the provisions of the On-Board Trains Occupational Safety & Health Regulations of March 26, 1987. To that end Addendum No. 72 reads, in part, as follows:

IT IS AGREED that, in order to assist locomotive engineers in the maintenance of qualifications under the Railway Employee Qualification Standards Regulations, the Company will provide training courses covering all required subject areas for the occupational category of locomotive engineer and, where deemed necessary, First Aid. When locomotive engineers are directed to attend such training courses, they will do so in accordance with the following conditions:

1. (a) The location at which training courses are to be conducted will be determined by the Company.

(b) Where the training location is at other than the employee's home terminal, the Company will arrange for and provide transportation. Employees authorized to use their personal automobile and who elect to do so will be paid the mileage allowance provided in the collective agreement in accordance with the conditions attached thereto.

(c) Where the training location is at other than the employee's home terminal and employees are required to travel to another terminal for training, time occupied in travelling will be paid for at the rate of 12-1/2 miles per hour at minimum passenger rates, provided the distance between the two terminals is 40 miles or more by the most direct highway route.

The addendum also provides for the payment of an accommodation and meal allowance as well as for wages to be paid to the employee for each day in attendance on the training course. Provisions also deal with employees being removed from the working list on days scheduled for their attendance at a training course, and their compensation in the event that they should miss a tour of duty.

Addendum No. 72B came into being on February 12, 1992. It reads as follows:

During negotiations which culminated in the signing of the Memorandum of Agreement dated February 12, 1992, in respect to the matter of training and re-qualification under the Railway Employee Qualifications Standards Regulations, there was some discussion about the duration of the training course.

In this respect, the Company indicated that the course is presently structured in a four-day format which includes First Aid training in addition to instruction and examination in the aforementioned Regulations. However, you were advised that changes to training methods or tools or revisions to course content might, at some time in the future, have some effect on the course duration.

However, you were assured that any contemplated change to the course duration will be communicated to the Brotherhood well before its implementation.

Subsequently, on May 13, 2001, Addendum No. 72C was introduced, in light of changes in QSOC training. It provides as follows:

The following is in keeping with the Company's commitment to advise the Brotherhood of changes regarding QSOC training as outlined in Addendum 72B.

Supervisor – led training will be delivered on a three-year cycle structured as follows:

Year 1 – Transportation Supervisor leads a one day Rules class

Year 2 – Transportation Supervisor leads a half day Rules class.

Year 3 – Employee is scheduled for a one day testing program for CROR, Block and Interlocking Signals and QSOC Technical subjects, which will include instruction in the QSOC (non-CROR) subjects.

NOTE: An emergency First Aid (EFA) certification course will be provided either in the Year 2 cycle or as otherwise designated.

Employees attending QSOC training, as modified, shall be entitled to the QSOC rate as provided for in Addendum 72 or a loss of wages, which ever is greater.

It is understood that the options for rest or receiving a call as specified in Addendum 72 remain unchanged for each session of the three-year cycle.

The Union now takes issue with a change in policy being introduced by the Company. In substance, whereas the Company previously set up the schedule on which the employees were to take their rules and first aid qualification courses, a schedule which might see them taking the courses on days which would otherwise be working days, or on days which might be non-working days, a new arrangement is now being implemented. Both under the previous policy and the newly emerging policy the first aid course was and is given by St. Johns Ambulance service. Previously the course would be at a location booked and scheduled by the Company, but that will no longer be so. The new arrangement is reflected in the terms of a notice provided to employees at Saskatoon, Biggar, Humboldt and North Battleford in the exercise of a pilot project which represents the Company's new policy. That letter reads, in part, as follows:

Following discussion at a recent Policy Safety and Health Committee Meeting, the decision was taken to embark on a new process for Running Trades employees to maintain their own requirement for First Aid qualification. Essentially, employees will be expected to make arrangements to re-qualify every three years through classes offered through local St. John's Ambulance offices, between trips or on assigned days off. First Aid classes will no longer be held locally in conjunction with Rules exam classes and it will be your responsibility to ensure your certification does not expire.

...

The Process:

1. Employees who are due or are coming due within the above time frame, will call the nearest St. John's Ambulance office to schedule a 1 day basic first aid course. Although this course may be offered in one 8 hour session, as well as two 4 hour sessions, employees must only register for the 8 hour session. The St. John's ambulance numbers are as follows: ...
2. Advise the St. John's Ambulance (SJA) representative, that you are with Canadian National Railways calling to book your Basic First Aid re-certification.
3. You will be asked for your name, work location and employee number (PIN). The representative will advise you the next available courses (dates, times and locations) in your area and ask you if you want to reserve a spot in one of these courses. You will be responsible to schedule your first aid training in a manner which will not interfere with your regular work assignments; if you are unsure as to the date/time of your assignment, then use your best judgement to schedule first aid training on a date/time least likely to interfere with your assignment. In many locations, evening and weekend classes will be made available.
4. When the scheduled date occurs, you will not book off, but rather advise the crew office you are attending your First Aid Course.
5. Should your schedule for work change such that your work and SJA course are in conflict, call the SJA number to cancel and reschedule a time. Should you unexpectedly get called during the course, you will be expected to complete the course.
6. The cost of the course is billed automatically to CN as long as you identify yourself as a CN employee and provide your PIN. At the class you will be expected to register and after you complete the course, you will advise the crew office of your successful completion, date and location and claim the QSOC Daily rate for payment (use Option 29 to record your time and to submit QSOC rate for payment for your attendance). Employees are reminded that it is their responsibility to "promptly" report the "actual time occupied" in the CATS system using the incidental Hours of Service screen (see note above on Option 29), to ensure the subsequent tour of duty remains in compliance with the Work/Rest Rules.
7. SJA will advise the Company at a later date of your first aid course completion. You must also retain your certification card from SJA as proof of qualification.
8. Employees are reminded that in order to protect their obligations under Subsection 5.2.1 of the Work Rest Rules (Mandatory Off-Duty Times at Home Terminals) they must also ensure that courses do not commence prior to the expiration of any mandatory rest period following the tour of duty immediately preceding attendance at a first aid course.

The Arbitrator has some difficulty with the position argued by the Union. In essence, the Company is seeking to avoid the inefficiencies occasioned by employees being unavailable for work by reason of their taking first aid courses. In pursuit of what must be recognized as a legitimate business interest, it seeks to maximize employees taking the courses at a time which would not otherwise be working time. The issue is whether that arrangement, and placing on the obligation upon the employee to book his or her first aid training, is in violation of the substantive provisions of Addenda No. 72, No. 72B or No. 72C.

The Arbitrator cannot see any violation of the provisions of those addenda in the policy being adopted by the Company. Firstly, I am satisfied that the Company is, quite clearly, still "providing" the course as contemplated within Addendum No. 72. While previously it contacted the St. John's Ambulance authority to set up training classes at a scheduled time and place, under the new arrangement which it has with the St. John's Ambulance, employees contact St. John's Ambulance, providing their names and employee numbers, to attend courses which are already publicly scheduled. Significantly, the Company, by its arrangement with the training provider, pays St. John's Ambulance for the cost of the course. Additionally, it continues to pay the employees the rates negotiated within Addendum No. 72 for the time which they spend in the course itself. Also, as explained by the Company's representatives at the hearing, in the event that it can be demonstrated that an employee has effectively lost a trip or assignment by reason of attending the course, the employee will still be compensated in

the manner contemplated within Addendum No. 72. In other words, the essential provisions of the addenda continue to be respected.

While it may be that the new arrangement will introduce greater efficiency, and avoid the excessive payment of wages previously encountered, the Union is unable to point to any language in the collective agreement or in the addenda which would prevent the Company from seeking those efficiencies to the extent that it may legitimately do so. Perhaps most fundamentally, there is nothing within the terms of the addenda which gives to employees the right to be scheduled for first aid training on time which would otherwise be working time for which they must be additionally compensated.

For all of the foregoing reasons the Arbitrator is satisfied that no violation of the collective agreement is demonstrated in the case at hand. The grievance must therefore be dismissed.

July 17, 2006

(signed) MICHEL G. PICHER
ARBITRATOR