CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3595

Heard in Montreal, Tuesday, 12 December 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

The implementation of assignments at Capreol, Ontario, alleged violation of article 27 (agreement 4.16) alternatively a dispute under the provisions of article 92.1 (agreement 4.16) in regards to the establishment of such assignments.

JOINT STATEMENT OF ISSUE:

Capreol is a CN Rail terminal on CN's northern route between Toronto and Winnipeg.

In October of 2006, CN Rail unilaterally established crew assignments. It is the Union's position that crew assignments had already been established at Capreol as required by the collective agreement and that the Company was prohibited from making such unilateral changes. The Union alleges that the Company is in violation of article 27 with respect to such action. Alternatively, the Union argues that the Union's position on the establishment of assignments should prevail by way of article 92 of agreement 4.16.

Article 92.1 states:

"Any dispute or disagreement concerning the establishment and regulation of assignments, pools and sets of runs, spare boards, furlough boards and the administration of such local arrangements as set out herein shall be processed in the manner set out herein."

Article 92.5 states:

92.5 The decision of the arbitrator shall be limited to a determination as to the practicality of the parties' respective positions on the issue(s) in dispute. The decision of the arbitrator shall, in now way, add to, subtract from, modify, rescind or disregard any provisions of this Agreement.

NOTE: For the purposes of this Article practicality means the capability of being reasonably done.

The Union takes the first position that the Company violated article 27. The Union requested that the Company revert back to the assignments as originally agreed. The Union further requires the Company to cease and desist from violating the provisions of the collective agreement. Alternatively, the Union argues that its position on the establishment of assignments should prevail and requests that the arbitrator direct the Company to implement the assignments as advanced by the Union.

The Company disagrees with the Union that it violated article 27. The Company maintains that the assignments it established should remain.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. A. BEATTY	**(SGD.) D. VanCAUWENBERGH**
GENERAL CHAIRPERSON	**FOR: VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

B. Hogan	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Sr. Manager, Labour Relations, Toronto
J. Krawec	– Manager, Labour Relations, Toronto
D. Fournier	– Regional Manager, CMC
R. A. Bowden	– Manager, Labour Relations, Toronto

And on behalf of the Union:

R. A. Beatty	– General Chairperson, Sault Ste. Marie
J. Robbins	– Vice-General Chairperson, Sarnia
W. G. Scarrow	– President, UTU (ret'd)
B. R. Boechler	– General Chairperson, Edmonton
R. LeBel	– General Chairperson, Quebec
G. Gower	– Local Chairperson, Toronto
S. Pommet	– Local Chairperson, Montreal
G. Anderson	– Vice-General Chairperson, Toronto
A. McDavid	– Local Chairperson, Capreol

AWARD OF THE ARBITRATOR

The dispute between the parties involves the interpretation and application of article 27 and article 92 of the collective agreement. The applicable provisions of article 92 are:

92.1 Any dispute or disagreement concerning the establishment and regulation of assignments, pools and sets of runs, spare boards, furlough boards and the administration of such local arrangements as set out herein shall be processed in the manner set out herein.

…

92.5 The decision of the arbitrator shall be limited to a determination as to the practicality of the parties' respective positions on the issue(s) in dispute. The decision of the arbitrator shall, in now way, add to, subtract from, modify, rescind or disregard any provisions of this Agreement.

NOTE: For the purposes of this Article practicality means the capability of being reasonably done.

The provisions of article 27 which relate to this dispute are as follows:

Establishment and Operation of Assignments in Through Freight Service

27.3 In through freight service (including SPRINT train operations on 17th Seniority District), assignments, pools or sets of runs will be established and regulated as locally arranged between the Local Chairperson of the Union and the proper officer of the Company. Such local arrangements will be consistent with the provisions of paragraphs 27.3 to 27.13 inclusive.

27.4 Separate assignments, pools or sets of runs will be established, to the extent possible, for:

(a) Conductors on trains which have been identified as meeting the criteria for operation with a crew consist of a conductor only as set out in Article 11.

(b) Conductors on trains which have been identified as requiring an assistant conductor pursuant to Article 11:

(c) Assistant Conductors on trains which have been identified as meeting the criteria for operation with a crew consist of a conductor only as set out in Article 11;

(d) Non-essential assistant conductor on trains which have been identified as meeting the criteria for operation with a crew consist of a conductor only as set out in article 11;

27.5 Through freight assignments, pools or sets of runs will be established and regulated in a manner which will not limit or otherwise restrict the provisions of this Agreement but which, at the same time, will maximize the regularity with which employees are required to report for work at the home terminal.

It is common ground that the provisions of articles 27 and 92 pertinent to this dispute came into being as part of the Conductor Only Agreement in or about 1991. There is a very substantial gap in understanding between the parties as to the meaning of these provisions. The Union maintains that at the time of the initial Conductor-Only Agreement the understanding between the parties was that at all affected terminals assignments, pools or sets of runs were to be initially established by the agreement of the parties. Once established, they could never be changed, save by the agreement of the parties. In the Union's submission, should the Company propose changed assignments at a given terminal, if the Union did not agree the Company's proposed change could not go into effect, nor could the matter be taken forward to arbitration for resolution under the provisions of article 92. In the Union's submission that article would be available only to deal with matters such as new trains, new assignments and other matters outside the purview of assignments already established. When asked by the Arbitrator how the Company could negotiate a change to existing assignments the Union's representative said that it is a matter that could only be taken up at the next round of bargaining for the renewal of the collective agreement.

The Company's view of these provisions is substantially different. It maintains that the understanding in 1991 was not that agreeing to assignments, pools or sets of runs would set those assignments in stone forever, with no ability for the Company to change them without the Union's agreement. In the Company's view it is open to the Company to make changes in assignments, albeit, from the time of the Conductor-Only

Agreement, the provisions of article 92 allow either party to proceed to arbitration with respect to the practicability of the disputed relative positions of the parties in respect of any proposed change in assignments, pools or sets of runs.

At issue is the Company's decision to change assignments at Capreol. In that respect it did two things: it changed the time block which applies to the West Pool at Capreol and, secondly, it regulated the number of employees operating out of the South Pool to North Parry, a pool which operates on a first in – first out basis. The Company's representatives explained that the changes were made by reason of experienced manpower shortages at Capreol. This, it submits, was the product of, among other things, a system of time blocks in the West Pool which resulted in fewer employees being available to cover operational needs on weekends. Beyond that, however, the Company maintains that the crewing arrangement at Capreol was leading to unacceptable rates of delay on virtually all days of operation. In the thirty-three day period between September 26 and October 28, 2006, immediately prior to the changes, the Company registered 11,598 minutes of delay attributable to crew delays at Capreol. In the thirty-three days subsequent to the change, that rate of delay fell to 3,767 minutes, by reason of crew delays, an improvement of approximately 75% in efficiency. The Company therefore argues that its changes in both the West Pool and the South Pool at Capreol are for valid business purposes and are more practicable from the standpoint of standards contemplated under article 92 of the collective agreement than is the position of the Union. The Union's position, it may be noted, is simply the *status quo*. It has not tabled any proposals to deal with the Company's perceived concerns

about delays. Essentially, its representative asserts that those arrangements which were agreed to in 1991 are still appropriate and should not be changed.

In approaching this dispute the Arbitrator has fundamental difficulty with the interpretation of the Union as regards the meaning and scope of the establishment of assignments under article 27 of the collective agreement. If the Union's position is correct, that article contemplates a once and for all agreement on assignments in or about 1991, never to be altered unless by the agreement of the Union, with virtually no recourse to arbitration or any other procedure to resolve any dispute between the parties over any proposed new system of assignments. As the Union would have it, the extensive provision for arbitral review provided in article 92 of the collective agreement is only to do with possible new or additional assignments that might be engrafted onto those which have already been agreed. However, nothing already agreed can ever be undone without the Union's consent, unless it is at the bargaining table at the renewal of the collective agreement, according to the Union.

It is, of course, open to a company to effectively give to a union what might arguably be the most important decision making power with respect to the administration of its operations. That is what the Union effectively claims in the case at hand. There are few managerial prerogatives more important than the scheduling and assignment of work. A surrender of authority over such a key issue, however, should obviously be supported by clear and unequivocal language. No such language is drawn to the Arbitrator's attention in the case at hand. There is nothing in the language of

article 27 of the agreement which indicates that an initial round of establishing assignments was to take place in 1991 and thereafter to be forever foreclosed from review or change, absent the Union's agreement. Nor does article 92 speak, whether directly or indirectly, of "new" assignments, pools and sets of runs. Significantly, it uses the same language phraseology as is found in article 27, speaking of "the establishment and regulation of assignments, pools and sets of runs …". On what basis can it be responsibly concluded that the provisions of article 92, which are clearly an important bargaining gain for the Union, were meant to apply only in the case of new trains, or other matters unrelated to existing assignments?

The Union's representative acknowledges that there is no language which gives clear support to the position argued by the Union in this grievance. He submits, however, that the history of negotiated changes, including a number of circumstances where the Union successfully resisted proposed changes, confirms the Union's understanding of the meaning of these provisions. With respect, the Arbitrator cannot accept that argument. The fact that the parties may have succeeded, over a period of some fifteen years, to reach agreement with respect to the nature and regulation of assignments in conductor only service demonstrates nothing more than that they were able to reach agreement, short of resort to article 92. That pattern of events does not, by any logic, confirm that the Union has an effective right of veto over any changes in assignments.

Nor, in the Arbitrator's view, does the language of article 27 expressly or implicitly prevent the Company from implementing a change in assignments until such time as the provisions of articles 27 and 92 are exhausted. In my view the language of these provisions is to be contrasted with those provisions governing the implementation material changes in operations, forestalling implementation until such time as the material change provisions and procedure of the collective agreement, including arbitration, have been exhausted. Again, any such radical limitation on the Company's normal and most critical prerogatives must be evidenced in clear and unequivocal language, language which is not to be found in the articles here under consideration.

In the result, the Arbitrator is satisfied that article 27 of the collective agreement does not prevent the Company from implementing a change in assignments, although it must first make a good faith attempt to obtain the agreement of the Union with respect to what it proposes. I am satisfied that that was done in the case at hand. Should the parties remain in disagreement, the appropriate venue for the matter is the process provided for under article 92.

In the case at hand, therefore, the issue then becomes whether the Arbitrator is to prefer the position of the Company or that of the Union with respect to the balance of practicability. On what basis can it be concluded that a system of assignments at Capreol which inevitably results in substantial delays in operations is to be preferred to the alternative proposed by the Company, the operation of which has been demonstrated to result in a 75% increase in productivity as regards the problem of

delays occasioned by crew difficulties at Capreol? To use the wording of the Note to article 92, the proposal put forward by the Company clearly has the capability of being reasonably done. Additionally, the Union has demonstrated no dimension of the Company's proposal which would in any way be inconsistent with the provisions of the collective agreement, including articles 27.3 to 27.13 inclusive. They are also consistent with maximizing the regularity with which employees are required to report for work at the home terminal of Capreol in a manner consistent with article 27.5 of the collective agreement.

For all of the foregoing reasons the Arbitrator finds and declares that the Company at all times acted in a manner consistent with its prerogatives and did not violate article 27 of the collective agreement. With respect to the dispute between the parties concerning either the status quo or the Company's proposed change of assignments at Capreol, for the purposes of article 92 of the collective agreement, the Arbitrator finds and declares that the position of the Company is the more practicable and should be allowed to stand.

For these reasons the grievance must be dismissed.

December 18, 2006

(signed) MICHEL G. PICHER
ARBITRATOR