

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

CASE NO. 3611

Heard in Montreal, Tuesday, 10 April 2007

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Manning of trains No. 16/17 between Charny and Matapedia.

JOINT STATEMENT OF ISSUE:

Three days a week the Corporation operates combined trains 14/16 from Montreal to Matapedia where they separate. Train 16 continues to Gaspé and 14 to Halifax. They return as trains 15 and 17 respectively and join at Matapedia.

On June 18, 2005, due to braking problems resulting from operating Renaissance and HEP equipment together, a decision was made to operate the trains 14/16 and 15/17 separately until the problem was resolved.

To ensure crewing for the trains on August 16, 2005, the Corporation advertised three temporary assignments to the Second District Quebec terminal locomotive engineers to operate the additional trains between Charny and Matapedia.

Trains 14/16 and 15/17 operated separately until October 10, 2005 when the braking problem was corrected.

The Union's position is that the Corporation had to share the regular assignment between the two districts involved Campbellton Territory K and Joffre Second District, as per the collective agreement.

The Corporation submits that the assignments were posted as temporary assignments only. Additional or extra trains operating east of Charny are manned by District 2 Quebec terminal locomotive engineers.

FOR THE UNION:

(SGD.) RENÉ LECLERC

GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) EDWARD J. HOULIHAN

DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Richard	– Sr. Advisor, Labour Relations, Montreal
E. J. Houlihan	– Director, Labour Relations, Montreal
W. A. Livingstone	– Manager, Train Operations East

And on behalf of the Union:

R. Leclerc	– General Chairman, Grand-Mère
C. Desbiens	– Local Chairman, Division

AWARD OF THE ARBITRATOR

At issue in this grievance is the Union's claim that for the period between August 16, 2005 and October 10, 2005, Train 16/17 should have been operated between Charny and Matapedia in accordance with article 207.1 of the collective agreement which provides for the proportionate sharing of work between employees from two separate districts on inter-district runs. Article 200 of the collective agreement establishes seniority districts. The Second Seniority District encompasses the territory between Montreal and Rivière du Loup whereas the First Seniority District covers the territory from Rivière du Loup to Campbellton. Trains operating from Montreal to Halifax and from Montreal to Gaspé therefore comprise inter-district runs and are subject to the provisions of article 207.1, which provides as follows:

207.1 Unless otherwise arranged, assigned runs extending over more than one seniority district will be filled by locomotive engineers from each of the seniority districts involved proportionately as nearly as possible on a mileage basis.

Trains 14/15 operate on a daily basis, save Tuesdays, between Montreal and Halifax. Trains 16/17 operate three days a week between Montreal and Gaspé. On those days when trains 16/17 operate they do so as a combined train with trains 14/15 for the trip between Montreal and Matapedia. At Matapedia the trains are separated, with Train 16 being operated onward to Gaspé and Train 14 continuing on to Halifax. On the return trips the reverse is operative, with Trains 15 and 17 being combined at Matapedia for onward travel to Montreal as a combined movement.

In the normal course the trains are operated between Montreal and a meeting point near Mont Joli by Quebec based locomotive engineers of the Second Seniority District. They are handled over the territory east of Mont Joli, to both Gaspé and Halifax, by Campbellton based crews of the First Seniority District. Because Trains 14/15 and 16/17 use different types of equipment, braking problems were encountered in June of 2005 with respect to the operation of the combined train between Montreal and Matapedia. For a temporary period, therefore, it was decided that the Montreal-Gaspé train, The Chaleur, would operate independently of the Montreal-Halifax train, The Atlantic. Initially the assignment of The Chaleur between Montreal and Matapedia was given to Quebec based crews of the Second Seniority District, although Train 14/15 continued to be crewed with locomotive engineers from both Quebec and Campbellton, based on the sharing provisions of article 207.1 of the collective agreement. The Corporation took the view that, based on past practice, it could assign Quebec crews on a temporary basis to handle the extra work of Train 16/17 between Charny and Matapedia. When the situation became somewhat prolonged, on August 16, 2005 the Corporation advertised three temporary assignments for an indefinite duration, again to the Quebec locomotive engineers.

The Union maintains that in the circumstances described the Corporation effectively violated the requirements of article 207.1 of the collective agreement. Its representative submits that it was under the obligation to negotiate with the Union to strive, insofar as possible, to establish a sharing of the inter-district work of The Chaleur train. The Union stresses that the train in question was a continuation of an established service, and not an extra train, and that the Corporation remained under the obligation to honour the work sharing arrangement of the collective agreement.

The Corporation takes a different view. Its representatives stress that on a number of occasions in the past, dating back to 1990, extra trains operating from Charny to Matapedia have always been crewed by Quebec locomotive engineers. By way of example, the Corporation notes extra trains sometimes put on during the Christmas period which have been crewed on that basis, indeed with the Union's agreement. The Corporation also points to other circumstances, such as technical equipment trains and deadhead trains similarly operated by Quebec crews. Its representatives maintain that in fact there were insufficient locomotive engineers in the First Seniority District to handle the temporary work which was necessitated by reason of the braking difficulties encountered on the combined train.

When regard is had to the language of article 207.1, the Arbitrator has some difficulty with the position of both parties. That provision speaks to the sharing of "assigned runs" which span more than one seniority district. In the Arbitrator's view that must contemplate, at a minimum, runs which are the subject of bulletins upon which employees can bid. That is to say, the provision contemplates a fair sharing of work which is sufficiently regular so as to constitute a bulletined assignment. The Arbitrator must agree with the underlying position of the Corporation that its obligation to ensure that work is proportionately shared between two seniority districts would not apply, for example, in the instance of a temporary assignment or extra train which will not operate on a regular and ongoing basis.

The Arbitrator is satisfied that for the period between June 18 and August 16, 2005, the arrangement for the operation of Train 16/17 between Charny and Matapedia could be fairly characterized as being temporary in nature and outside the contemplation of the phrase “assigned runs” within article 207.1 of the collective agreement. However, when the decision was made to bulletin the work in question effective August 16, 2005, it is difficult to escape the conclusion that what was then put into place, albeit for an indefinite period, was an assigned run within the meaning of article 207.1 of the collective agreement.

In the result, the Arbitrator is compelled to find and declare that the Corporation was under an obligation to apply article 207.1 to the work between Mont Joli and Matapedia on Train 16/17 for the period between August 16, 2005 and October 10, 2005. Its obligation, however, was not without limitations. Article 207.1 clearly contemplates that sharing is to be implemented “... as nearly as possible”. If, in fact, there were insufficient locomotive engineers on the First Seniority District to meaningfully share the work, that would limit the Corporation’s obligation as it would apply to the temporary arrangement then being contemplated. However, that limitation did not relieve the Corporation from the obligation to consult with the Union in an effort to determine what manpower might be available from the First Seniority District to share, as far as possible, the work in question. As it is unclear what the practical reality might have been, the Arbitrator determines that this is an appropriate case to remit the matter back to the parties for their own discussions with respect to the appropriate remedy. Should they fail to reach agreement, the matter may be spoken to.

The grievance is therefore allowed, in part. The Arbitrator determines that the Corporation was under an obligation to discuss with the Union a sharing of work on the inter-district run between Mont Joli and Matapedia and to implement such sharing as could be practicably achieved for the period between August 16 and October 10, 2005. Should the parties be unable to resolve the issue of remedy, the Arbitrator retains jurisdiction.

April 16, 2007

(signed) MICHEL G. PICHER
ARBITRATOR