CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3635

Heard in Montreal, Thursday, 11 October 2007

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

There appeared on behalf of the Company:

S. Seeney	– Manager, Labour Relations, Calgary
A. Dannji	– Project Engineer, Labour Relations, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa

PRELIMINARY AWARD

The Union requests an interim order pursuant to section 60(1)(a.2) of the **Canada Labour Code**. Specifically, it objects to the unilateral implementation of a pilot project by the Company. For the month of October, 2007, the Company has instituted an electronic bidding option for bulletins in two locations: Algoma and Moose Jaw. The pilot project, intended to last for a month, allows employees who wish to do so to place their bids through electronic communication on the Company's intranet system. The option of bidding by submitting a written form or faxing a bid form remains available to the employees. The Company's representatives submit that following the one month pilot project the Company's intention is to work out any problems which may be disclosed, and to roll out the option of electronic bidding system wide in December of 2007.

In seeking interim relief, effectively asking the Arbitrator to direct that the Company suspend the pilot project pending the arbitration of the Union's grievance, the Union's representatives rely on article 10.2 of the collective agreement as well as on Appendix B-55, negotiated at the last round of bargaining. Those provisions read as follows:

> **10.2** Bulletins will show classifications of position, location and/or expected work locations in production gang advertisements, rest days, closing date, particulars of living accommodation, if the vacancy is temporary, its expected duration and any other information relevant to the position. The format of bulletins will be standard across the System.
>
> **Appendix B-55 Bid/Award System**
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> This is in regard to our discussions during negotiation pertaining to the Company's desire to increase workplace stability by streamlining the process associated with the Bid/Award System.
>
> While the Union was unable to agree with the Company's demand, the parties did agree to meet during the closed period of the contract to explore possible changes that could be made. Further, it

> was agreed that any savings that might be generated through a modification of work rules that lead to a streamlining of the Bid/Award System would be equally shared between the parties.
>
> If the foregoing accurately reflects your understanding of this matter, please indicate your concurrence in the space provided below.

Is this a case for interim relief? As expressed in **CROA&DR 3561**, the Arbitrator must consider two elements:

> The two-fold question to be addressed is whether the dispute raises a fair question to be arbitrated and, if so, where does the balance of foreseeable damage or harm lie? (**See, Re Aliant Telecom Inc. and Atlantic Communication and Technical Workers Union** (2002) 103 L.A.C. (4th) 304 (Christie).)

There is obviously a fundamental difference between the parties with respect to the Company's right to unilaterally change the bidding system. It is the Company's view that the collective agreement does not in any way constrain its ability to change the forms and documents which are used for the purposes of bidding, provided, of course, that it produces bulletins which conform to all of those elements required by the collective agreement, as articulated in article 10.2. The Union argues that the Company effectively gave to the Union the ability to negotiate or, at a minimum, discuss any change in the system of bidding by agreeing to the language of Appendix B-55 of the collective agreement. It also argues that the pilot project would, of itself, violate the obligation to maintain uniform bidding across the system. The Company maintains that its electronic bid option in the two pilot project locations does not in fact deviate from the format, to the extent that it incorporates all of the elements required by article 10.2.

On the basis of the foregoing the Arbitrator is satisfied that there is clearly an arbitrable issue presented. The more difficult question, it seems to me, is whether there is a sufficient prejudice shown that would justify the extraordinary remedy which the Union seeks. The Arbitrator has some difficulty with the Union's submission in that regard.

Foremost in the Union's submission is the argument that it effectively bargained the ability to discuss the move towards any automated bidding system at the bargaining table and that it executed Appendix B-55 as a means of ensuring that it has input into that process during the term of the collective agreement. With respect, the language of Appendix B-55 does not appear to support the Union's view of what it achieved. The appendix does not, on its face, speak directly to the discrete issue of electronic or automated bidding. Rather, it speaks much more broadly to the general streamlining of the bid/award system, with particular focus on discussion of the possible modification of work rules that might prompt greater streamlining of the system, with the possibility of any savings being equally shared between the parties. The Arbitrator cannot discern from the language of Appendix B-55 that the Company effectively undertook to surrender any ability it might have with respect to making changes to methods and forms of bidding. The parties did, it appears, agree to sit down during the closed period to discuss possible work rule changes which might contribute to streamlining. That process is obviously not undermined by the Company's initiative, and can plainly go forward as scheduled.

What is left, effectively, is an arguable technical violation of article 10.2. Interestingly, the Union concedes that it would be open to the Company to apply electronic bidding on a system wide basis, thereby avoiding any violation of article 10.2. The partial violation of that provision is, therefore, what remains as the arbitrable issue to be discussed, subject to such issues as might emerge with respect to the application of Appendix B-55 which are not apparent on the face of its language.

On the whole of these facts, the Arbitrator is not persuaded that there is prejudice or damage to the Union of such a kind as would merit the extraordinary remedy which it now seeks. That is particularly so where, as in the case at hand, the employees subject to the pilot project are under no obligation to bid electronically, and do so only voluntarily. Whether the Company has the right to implement such a system, whether in light of article 10.2 or Appendix B-55, can be ultimately dealt with in the fullness of time by the grievance and arbitration process. This is not a circumstance, in the Arbitrator's view, where urgency and the possible harm to the Union and its members demonstrably outweighs what appears to be the *prima facie* right to administer the bidding system by introducing automated bidding in a manner intended to lead to its system wide implementation.

For all of the forgoing reasons the Union's request must be dismissed.

October 12, 2007

(signed) MICHEL G. PICHER
CHIEF ARBITRATOR