

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3678**

Heard in Montreal, Tuesday, 8 July 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

&

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE – UNIONS:

The removal of trains 452 and 453 from the Prairie North Line, between the terminals of Winnipeg and Humboldt creating significant adverse effects to Locomotive Engineers at Dauphin, Canora, and Winnipeg without fulfilling the requirements of Article 89.1 of Agreement 1.2 in keeping with historical past practice, and of Article 139 of Agreement 4.3.

TCRC'S STATEMENT OF ISSUE:

In November of 2006, the company initiated a change in the operation of Trains 453/452 between Winnipeg, MB and Humboldt, SK. These trains had previously operated exclusively over the Prairie North Line (PNL) between Edmonton and Winnipeg through the terminals of Dauphin, Canora, Humboldt and North Battleford. Effective November 24, 2006, the Company re-routed these trains over the mainline between Winnipeg and Saskatoon and back to the Prairie North Line between Saskatoon and North Battleford. As a result, the home terminals of Dauphin and Canora were by-passed.

This change in operations has created significant adverse effects to Locomotive Engineers at Dauphin and Canora. There has been a significant reduction in work opportunities as a result of the elimination of over half of the trains that operated through those terminals. It has also created, albeit to a lesser extent, adverse effects to the terminal of Winnipeg reducing the mileage worked and earnings for Winnipeg Locomotive Engineers working on trains 452/453.

The Union contends that these changes constitute a material change in working conditions and that the Company was required to serve Notice and to negotiate to minimize the adverse effects on employees in accordance with Article 89 of Agreement 1.2. The Union seeks a declaration to this effect; an order that the Company cease and desist operating in this manner and return to prior operations unless and until Article 89 is complied with; a "make whole" order fully compensating all employees affected by the Company's actions; and such further and other remedies as may be appropriate.

The Company denies that these changes constitute a material change as contemplated by Article 89, and has denied the Union's grievance.

UTU'S STATEMENT OF ISSUE:

In November of 2006, the Company made an operational decision to cease operations of train 452-453 on the Prairie North Line.

This change in operations has created adverse effects to the terminals of Dauphin and Canora, eliminating over half of the trains that operated through those terminals. It has also created, albeit to a lesser extent, adverse effects to the terminals of Winnipeg and Humboldt, including, inter alia, reducing work availability and increasing layover time at the away from home terminal.

The Union contends that these changes constitute a material change in operating conditions and, as such, ought to have been addressed pursuant to Article 139 of Agreement 4.3. The Union seeks a declaration to this effect; an order that the Company cease and desist operating in this manner and return to prior operations unless and until Article 139 is complied with; a "make whole" order fully compensating all employees affected by the Company's actions; and such further and other remedies as may be appropriate.

The Company denies that these changes constitute a material change as contemplated by Article 139.

DISPUTE – CNR:

Union policy grievance alleging violation of the material change provisions, concerning the rerouting of trains 453-452 from Prairie North Line commencing November 24th 2006.

COMPANY'S STATEMENT OF ISSUE:

On November 24, 2006 the Company proceeded to reroute trains 453/452 to and from the Prairie North Line and the mainline via the Warman subdivision at Saskatoon Saskatchewan.

The Unions contend that this change had created significant adverse effects to the terminals of Canora and Dauphin that constituted a material change in operating conditions and, as such, ought to have been addressed pursuant to Article 89:1 of Agreement 1.2 and Article 139.1 of Agreement 4.3.

The TCRC claims the terminals of Dauphin and Canora lost four (4) locomotive engineer positions as a direct result of the Company's actions. The TCRC also claims article 89.1 of agreement 1.2 outlines the action the Company must initiate to mitigate any adverse effects on locomotive engineers in these circumstances. Moreover, the Company did not serve the 180 day notice. The TCRC is seeking an order that the Company cease and desist operating in this manner and return to prior operations.

The UTU claims employees at the terminals of Canora and Dauphin have been affected by the change and requests the Company cease the action by reverting back to previous operations until the requirement of the material change article are fulfilled.

The Company's position is that the rerouting of traffic that occurred commencing on November 24th 2006 does not constitute a violation of the material change provisions in the noted collective agreements. The Company has declined the Unions' grievances.

FOR THE UNION:

(SGD.) B. WILLOWS
GENERAL CHAIRMAN

(SGD.) R. S. THOMPSON
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. MORRIS
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- K. Morris – Manager, Labour Relations, Edmonton
- D. VanCauwenbergh – Director, Labour Relations, Edmonton
- J. Newton – Superintendent Operations,
- B. Laidlaw – Manager, Labour Relations, Winnipeg

And on behalf of the Unions:

- M. Church – Counsel, Toronto
- B. Willows – General Chairman, Edmonton
- R. S. Thompson – General Chairperson, Edmonton
- G. Bates – Vice-President . Canadian Legislative Director, Ottawa
- I. Galandy – Local Chairman, TCRC, Canora
- R. McNally – Local Chairman, TCRC, Humboldt
- R. Hackl – Advisor / Witness

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. The Company made the decision to reroute trains 453/452, which previously operated to and from Winnipeg and Saskatoon via the Prairie North Line. The decision was made to operate those trains southward from Winnipeg onto the main line, through Rivers, Melville, Watrous and Saskatoon, then travelling northwards to Warman and back onto the Prairie North Line westwards through North Battleford, Lloydminster, Vermillion and on to Edmonton. There is no dispute that the change caused the elimination of work assignments for locomotive engineers and conductors at Dauphin and Canora, as trains 453/452 no longer operated through those terminals. The Unions submit that to a lesser extent work opportunities were also reduced at Winnipeg and Humboldt, the latter being located on the by-passed section of the Prairie North Line.

The fact that a change has occurred and that the change has visited adverse effects on employees does not, of itself, constitute a material change in relation to which the Company is obligated to give notice and negotiate or arbitrate measures to minimize adverse effects as contemplated under article 89.1 of the collective agreement governing locomotive engineers and article 139 of the collective agreement which pertains to conductors.

In the instant case the Company maintains that what transpired is a business and operational decision which is normal, and is expressly excluded by the terms of article 89.6 of the locomotive engineers' collective agreement and article 139.1(k) of the collective agreement governing conductors. These provisions are essentially the same, and article 89.6 of collective agreement 1.2 reads as follows:

89.6 The changes proposed by the Company which can be subject to negotiation and arbitration under this article 89 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which locomotive engineers are engaged.

The position of the Company is that what transpired in the case at hand was the rerouting of two trains, to be handled by members of both Unions at terminals and on subdivisions under the work jurisdiction of those employees. It submits that the case at hand is not analogous to run-throughs or the closure of a home station or any similar measure that has been found by this Office to constitute a material change. Relying on prior jurisprudence, the Company's representatives submit that the change in question falls well within the phrase "... other normal changes inherent in the nature of the work

in which locomotive engineers are engaged,” as expressed in article 89.6 of collective agreement 1.2 and similarly restated in sub-paragraph (k) of article 139.1 of collective agreement 4.3.

From a purposive standpoint the Company submits that it would visit extreme hardship on its operations if no change in the routing of a train could ever be implemented without providing the notices of 180 days or 120 days contemplated in the material change provisions of both collective agreements. It stresses the fact that a material change cannot be implemented under the terms of collective agreement 4.3 until such time as the process of notice, negotiation and/or arbitration has been exhausted. Its representatives implicitly submit that while that level of formality and delay may be appropriate to changes as significant as terminal closures, a fair reading of the collective agreement and of the jurisprudence does not sustain the position of the Unions to the effect that a change in the routing of a train constitutes a material change for the purposes of the collective agreement.

Upon a review of the jurisprudence the Arbitrator is compelled to agree with the Company. What has occurred in the case at hand is essentially the transfer of work in relation to trains 452 and 453 operating between Winnipeg and Edmonton so that work handled by certain terminals on the Prairie North Line is now handled, in part, by terminals situated on the Company's main line between Winnipeg and Edmonton. In **CROA 3332** the arbitrator found that the assignment of trains entirely to crews home terminalled at Melville, including work previously performed by crews home terminalled at Biggar, is not a material change as contemplated by paragraph 89.1 of collective agreement 1.2. It was found that the change implemented by the Company, which

appears to have been motivated by eliminating the non-productive deadheading of crews, fell under the rubric of “normal changes inherent in the nature of the work in which locomotive engineers are engaged.” In that award the arbitrator commented as follows:

This Office has long held that the reassignment of work at home stations is clearly inherent in the nature of the work in which locomotive engineers are engaged within the meaning of article 89.6 of the collective agreement. Changing the home terminal of an assignment was specifically recognized as not constituting material change for the purposes of article 89 in **CROA 332**. Similarly, **CROA 1444** confirms that the relocation of a wayfreight assignment from one home terminal to another is in the nature of normal changes inherent in railway operations, and does not constitute a material change (see also **CROA 1167, 2893 and 2973**).

The case at hand obviously does not involve the transfer of work from employees at one home terminal into the hands of employees at an adjacent home terminal on the same subdivision. It does, however, involve the transfer of work previously handled by employees home terminalled at Dauphin and Canora to employees home terminalled on the Company's main line, whether at Winnipeg, Rivers, Melville, Watrous or Saskatoon. On what logical basis can that kind of adjustment be distinguished from the cases cited above? I can see none. The reorganizing of assignments and the rerouting of trains, while obviously not something which is done every day, is nevertheless very much a part of the day-to-day operations of a railway. Business exigencies require that such changes can and must be made to maximize efficiency, customer service and ultimately the profitability which inures to the financial security of the Company and the job security of its employees. In the case at hand the work in question was reassigned to achieve greater efficiencies, both from the standpoint of the transshipment of freight from Scotford Yard at Fort Saskatchewan, east of Edmonton, and from the standpoint of avoiding the less advantageous grades found on the eastern portion of the Prairie North

Line. While the Company does not need to justify its decision either to the Unions or to the Arbitrator, it is clear in the case at hand that normal business considerations did prompt the Company's change in the routing of trains 452/453. I am satisfied that the change implemented is clearly one which is normal to the operations of a railway, and while it may have resulted in some reductions in work opportunities in the terminals of the Prairie North Line, it does not constitute a material change within the provisions of either article 89 of collective agreement 1.2 or article 139 of collective agreement 4.3.

For all of these reasons the grievance must be dismissed.

July 11, 2008

(signed) MICHEL G. PICHER
ARBITRATOR