

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

**CASE NO. 3686**

Heard by conference call July 16,2008

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

**DISPUTE:**

Appointments to the Regional Implementation/Review Committee.

**JOINT STATEMENT OF ISSUE:**

*While no Statement of Issue was filed in this case the parties agreed to proceed immediately with the UTU – GO 129's request for an interim order. Both parties made written submission to the Chief Arbitrator prior to the conference call. The United Transportation Union International also made submissions and attended on the conference call as Intervenor.*

On July 16, 2008, there appeared on behalf of the Company:

André C. Giroux – Counsel, Montreal  
Douglas Van Cauwenbergh – Director Labour Relations, Edmonton

And on behalf of the Union:

Michael Church – Counsel, Toronto  
Robert S. Thompson – General Chairperson, GO 129, Edmonton

And on behalf of the Intervenor, United Transportation Union International:

Brian Shell – Counsel, Toronto

**INTERIM AWARD OF THE ARBITRATOR**

*(Based on the parties written submissions and oral arguments via conference call)*

The General Chairperson for GO- 129, situated in Edmonton, Alberta and responsible for Union business on the Company's Western Lines, seeks interim relief. Specifically, he asks the Arbitrator to direct that Mr. Brian Boechler be appointed as his nominee to the Regional Implementation Review Committee, over the objection of the President of the UTU International in Cleveland, Ohio.

The bargaining rights for the instant bargaining unit are presently under contest. A representation vote has been conducted in respect of a displacement application brought before the CIRB by the Teamsters Canada Rail Council (TCRC). The results of the vote are soon to be counted. At present, the bargaining rights remain with the UTU International.

The conflict in relation to the TCRC application has resulted in former General Chairman for Western Canada, Brian Boechler, being suspended from Union membership by a resolution of the Board of Directors of the UTU International on February 19, 2007. He continues to be employed as a conductor/trainperson in the bargaining unit.

The Implementation/Review Committee, also referred to as the Method of Pay Review Committee, is charged with periodically reviewing the system of remuneration for bargaining unit employees in Western Canada. Originally scheduled to meet on July 14, 2008, the Committee, comprised of two Company representatives and two union representatives, one each from the TCRC (locomotive engineers) and UTU (conductors) is to make important decisions affecting the wages of employees across the system in Western Canada. The appointee of the UTU is

determined by the General Chairperson, as reflected in the language of Addendum 70, clause 12(b) which provides, in part:

Regional Implementation/Review Committee (Temporary) Consisting of:

- 1 appointee by each CCROU General Chairman
- 2 Senior Company Officers

Mr. Rob Thompson, General Chairperson for the UTU, wishes to appoint former General Chairperson Brian Boechler as his appointee to the Method of Pay Committee. It is not disputed that Mr. Boechler has performed that function on many occasions in the past and is the person most familiar with the process and issues of the Committee. The UTU International President has advised the Company that Mr. Boechler cannot sit as an appointee of the UTU on the Committee. Based on that advice the Company is declining to meet with Mr. Boechler as the appointee of the General Chairman. Understandably, it does not wish to be placed in a position which could result in a complaint that it has interfered with the administration of a trade union and the representation of its employees by the Union.

No one disputes the urgency of this interim award. While the meeting of July 14 has been postponed by agreement, it is not disputed that the Committee must meet in advance of the next arbitration sittings of this Office, in September and preferably in the next week or two. As the Company's representative explained, to have the Committee postpone its meeting to October would in all likelihood result in employees having their wages clawed back in a scenario that is problematic for the Company, the Union and the employees affected.

As reflected in the jurisprudence, the two questions to be addressed are whether there is a fair question to be arbitrated and if so, where does the balance of foreseeable damage or harm lie? (**Alliant Telecom Inc.** (2002), 103 L.A.C. (4th) 304 (Christie)).

There can be no doubt that a fair arbitrable issue is presented. *Prima facie* both the Constitution of the UTU and the collective agreement appear to vest in the General Chairperson the exclusive management of wage issues and an exclusive power of appointment to the Method of Pay Committee. The Constitution provides, in part:

General Committees of Adjustment shall have authority to make and interpret agreements with representatives of transportation companies covering rates of pay, rules, or working conditions – subject to membership ratification in accordance with the principles of this Article.

...

In the event a matter cannot be satisfactorily adjusted, the General Chairperson may request the assistance of the International President.

...

Any system or local adjustments agreed to by the International President or by his/her representatives, shall be subject to a majority vote of the local chairpersons affected.

As appears from the foregoing, it is much less than clear that the International President can simply trump the decision of a General Chairperson in matters of wage adjustments. It would appear that the International President cannot begin to act in such matters without the invitation of the General Chairperson to do so.

Under the **Canada Labour Code**, collective agreements are conceived as rational and binding documents intended to provide certainty in the day to day management of the terms and conditions of employment of the employees who are subject to an agreement. It would, for example, be highly counter-intuitive to conclude that an international union president could intervene to make an agreement with an employer for a reduction of wages or benefits, or an extension of working hours, notwithstanding the terms of a collective agreement. The instant agreement expressly vests in the General Chairperson the authority to choose his or her appointee to the Method of Pay Committee. On its face the language would not appear to preclude the appointment of an accountant, a lawyer or of a consultant of the General Chairperson's choosing, regardless of their membership status. While the merits of the issue have not been argued here, it would appear to the Arbitrator that there is a clear *prima facie* issue to be arbitrated.

What of the balance of foreseeable damage? Counsel for the International Union has presented no argument delineating any specific harm which could result to the International Union in the event Mr. Boechler is appointed. His involvement on the Committee cannot impact the bargaining rights application pending before the CIRB, as the representation vote has been taken and is "in the can", soon to be counted. There has been no suggestion made that Mr. Boechler, who is a highly respected individual, would act in bad faith to undermine the interests of the General Chairperson or of the employees. At most what emerges is the prospect, obviously unpalatable to the International

President, that a person driven from UTU membership can be made a Committee appointee within the discretion of the General Chairperson. With respect, while that perspective may be understandable, it does not weigh heavily when the interests of the General Chairperson are compared. Additionally, the Company has made no argument that it would suffer harm should Mr. Boechler be appointed.

Nothing which the General Chairperson does is arguably more important than managing wage adjustments. The unchallenged representation which Mr. Thompson makes to this Office is that no one has the experience and skills of Mr. Boechler to do the complex and important work of representing him on the Method of Pay Committee. While counsel for the International Union questions why someone else could not be appointed, the Arbitrator has some difficulty with a position that questions the judgement and desires of the General Chairperson, particularly in light of the language of Addendum 70 of the collective agreement, which appears to make the appointment one which is to be made in the sole discretion and judgement of the General Chairperson. With respect to the balance of foreseeable harm, to deny the interim relief sought would, it appears, place the wage protection of the employees in the hands of a lesser qualified individual than Mr. Boechler, a result fraught with greater risk both for the employees and their General Chairperson. I am satisfied that in these circumstances the risk of foreseeable harm compellingly favours the granting of the interim relief sought by Mr. Thompson.

The application for interim relief is therefore allowed. The Arbitrator directs the Company to accord forthwith to Mr. Boechler full and unqualified status as the appointee of the General Chairperson to the Regional Implementation/Review Committee.

Dated at Ottawa this 21st day of July, 2008

**(signed) MICHEL G. PICHER**  
**CHIEF ARBITRATOR**