CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3762

Heard in Montreal, Wednesday, 13 May 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The alleged blatant violations the collective agreement, arbitration awards and orders of the Canada Industrial Relations Board and, given such violations, the appropriate remedy to apply under the provisions of Addendum 123 of collective agreement 416.

UNION'S STATEMENT OF ISSUE:

Subsequent to being called for duty on May 24, 2006, Conductor Denis Rioux properly advised the Company of his desire to hook rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on June 1, 2006, Conductor Gilles Gagne properly advised the Company of his requirement for rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on June 8th, 2006, Conductor Pierre D'Estimauville properly advised the Company of his requirement for rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on June 18, 2006, Conductor Daniel Lefebvre properly advised the Company of his desire to book rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent in being called for duty on July 5, 2006, Conductor Raynald Simard properly advised the Company of his desire to book rest under the terms or the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on July 17, 2006, Conductor Alain Otis properly advised the Company of his desire to book rest under the terms of the collective agreement which the Union alleges was not complied with by the Company. Subsequent to being called for duty on August 2, 2006 Conductor Charles-Henri Bouchard properly advised the Company of his requirement for rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on August 4th 2006, Conductor Daniel Lefebvre properly advised the Company of his requirement for rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on September 7, 2006, Conductor Jean-Claude Levesque properly advised the Company of his desire to book rest under the terms or the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on May 23, 2007, Conductor Daniel Mandeville properly advised the Company of his desire to book rest under the terms of the collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on June 12 and August 28, 2007, Conductor Raynald Simard properly advised the Company of his desire to book rest under the terms of the

collective agreement which the Union argues was not complied with by the Company. Subsequent to being called for duty on March 3 and 22, 2008, Conductor Christian Belzile properly advised the Company of his desire to book rest under the terms of the collective agreement which the Union argues was not compiled with by the Company.

The Union submits that the Company in such referenced matters jointly and/or severally, blatantly violated; I. article 51 of collective agreement 4.16; 2. workplace environment provisions of the 4.16 collective agreement; 3. cease and desist orders as directed in prior arbitration awards; 4. cease and desist orders as directed by the Canada Industrial Relations Board.

The Union, given its contentions that the Company blatantly violated the collective agreement and in consideration that such violations were in contravention of cease and desist orders, the Union requests that the arbitrator; 1. declare that the Company blatantly violated article 51 and the workplace environment provisions of the 4.16 collective agreement. 2, Declare that the Company blatantly violated the cease and desist orders as provided in previous arbitration awards and as directed by the Canada Industrial Relations Board. 3. Apply a remedy, in the amount of $1,000,000.00 (one million dollars) to be paid to the Union under the provisions of Addendum 123 of collective agreement 4.16. 4. All costs (including legal costs) associated with the progression of these matters to arbitration. 5. Any alternative remedy as the arbitrator deems appropriate in these circumstances. 6. Any other directive, in favour of the Union, as the arbitrator deems appropriate these circumstances.

The Company disagrees with the Union. [sic]

FOR THE UNION:

(SGD.) D. JOANNETTE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Gagné	– Manager, Labour Relations, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Toronto
A. Daigle	– Manager, Labour Relations, Montreal
B. Hogan	– Manager, Labour Relations, Toronto
D. S. Fisher	– Director, Labour Relations. Montreal
R. Helme	– Regional Manager, CMC
A. Durochers	– Assistant Manager, CMC

And on behalf of the Union:

R. A. Beatty	– Transition Director, Sault Ste-Marie
D. Joannette	– General Chairman, Quebec
L. Morency	– Office Manager, Quebec
C. Belzile	– Local Chairman, Quebec
A. Johnson	– Vice-Local Chairman, Quebec
G. Gower	– Vice-General Chairman, Belleville

PRELIMINARY AWARD OF THE ARBITRATOR

The Company objects that fourteen grievances filed by the Union to arbitration have been progressed in an untimely manner. Simply put, the Company notes that the grievances were discussed at Joint Conference, a process which concluded on October 30, 2008. The Company points to the provisions of article 84.4 of the collective agreement which provide as follows:

> **84.4** A request for arbitration shall be made within 60 calendar days from the date decision is rendered in writing by the Vice-President by filing written notice thereof with the Canadian Railway Office of Arbitration and on the same date a copy of such filed notice will be transmitted to the other party to the grievance.
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> **NOTE:** In the application of this paragraph upon receipt of a request for arbitration, the Company will meet with the General Chairperson, within 30 calendar days from receipt of such request, to finalize the required Joint Statement of Issue. Failure to comply with the provisions of this paragraph will permit either party to the dispute to progress the dispute to the Canadian Railway Office of Arbitration on an "ex parte basis" pursuant to the provisions of the Memorandum of Agreement governing the Canadian Railway Office of Arbitration.

In essence, the Company submits that the Union had sixty days after October 30, 2008, until December 29, 2008 to make a request for arbitration by filing its notice with this Office in accordance with the terms of article 84.4 of the collective agreement. Four of the grievances in fact had a slightly longer period given the timing in respect of them which, according to the Company, would have seen the expiry of their sixty day delay effective February 15, 2009.

The Company submits that in fact there was no real notice to the Company of the Union's intention to proceed to this Office until a written notice by letter to that effect dated March 16, 2009 was provided to its Vice-President for Eastern Canada. In that correspondence the Union enclosed a proposed joint statement of issue, indicating that a failure of a response within twenty days should cause the letter to be viewed as notice of the Union's intention to proceed in this Office on an ex parte basis. However, the record also discloses that by a letter dated December 4, 2008, the Union's General Chairman, Mr. D. Joannette, wrote to the Company's Director of Labour Relations stating that a proposed settlement made by the Company was unacceptable and concluding by stating (in the Arbitrator's translation): "… We will seize the Canadian Railway Office of Arbitration & Dispute Resolution with these grievances, which will be treated jointly and individually."

Among the submissions of the Union is that the letter of December 4, 2008 did constitute notice to the Company of the Union's moving to arbitration in satisfaction of the requirements of article 84.4 of the collective agreement. In an alternative submission, the Union argues that the Arbitrator should, in any event, exercise his discretion pursuant to section 60(1.1) of the **Canada Labour Code** to extend the time limits in relation to the grievances.

The Arbitrator cannot sustain the view that the letter of December 4, 2008 did constitute the request for arbitration to be made within sixty calendar days as contemplated within article 84.4 of the parties' collective agreement. As is evident from the language of that provision, such a step is to be taken by filing of written notice to this Office, with a copy being transmitted to the other party, and in keeping with the rules of this Office. That was not done on the facts of the case at hand.

However, with respect to the alternative submission of the Union concerning the exercise of the Arbitrator's discretion, I do not consider that the letter of December 4, 2008 is entirely

irrelevant. For the purposes of the **Canada Labour Code** the Arbitrator must consider whether it is reasonable to grant an extension of the time limits and whether to do so would unduly prejudice the other party. I have difficulty on the facts of the case at hand in appreciating what prejudice would be visited upon the Company by an extension of time limits in this case. While it is true, from a technical standpoint, that the formal notice of arbitration was not served upon the employer until March 16, 2009, it does appear that the Company was given a clear written indication from the Union as early as December 4, 2008 that it fully intended to proceed to arbitration. Even accepting that there was a delay of better than two months with respect to the first ten grievances and approximately one month for the latter four grievances, this is not a circumstance where a Union seeks to revive a claim long abandoned to the possible surprise and prejudice of the other party.

The very purpose of the Arbitrator's discretion to extend time limits as contemplated by Parliament in the provisions of the **Canada Labour Code** is to avoid foreclosing access to justice for unions and employees, as well as employers, by the overly rigorous application of the technical provisions of their collective agreement. While a board of arbitration should obviously not disregard the parties' own intentions in making time limits mandatory, a degree of fairness and common sense must be brought to those cases where the delay is relatively short and where, as in the instant case, there is no evidence of any substantial prejudice to the other party. While the Company has suggested that the passage of time may cause memories to fade and that witnesses may not be available, it makes that argument only in the most general sense, without any reference to a specific such instance in the case at hand. Indeed, if the collective agreement had been followed to the letter, the only difference in time would only have been a matter of several weeks.

In all of the circumstances the Arbitrator is satisfied that this is an appropriate case for the extension of time limits. The preliminary objection of the Company is therefore dismissed and the General Secretary is directed to place this case in line for hearing.

May 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR

The July 2009 arbitration hearing was adjourned and ultimately resolved between the parties.