CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3910

Heard in Edmonton, June 9, 2010

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Interpretation and application of Article 132 of the Teamsters Canada Rail Conference – Conductors, Trainmen and Yardmen – Division 105.

JOINT STATEMENT OF ISSUE:

January 31, 2008 – Fort St. John Terminal Policy Grievance

On January 20, 2008 the Company abolished assignment 472/473 out of Fort St. John and bulletined assignment 473/472 out of Chetwynd. The Union alleges a violation of article 132(1)(a) by not notifying the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned prior to creating the new disputed assignment and cancelling the prior assignment. In the alternative, the Union alleges that the disputed new assignment constitutes an unreasonable exercise of management rights which should be set aside.

April 15, 2009 – Squamish, Lillooet and Prince George Subdivisions

With change of card on April 1, 2009, the Company abolished assignments 571/570 out of Williams Lake and bulletined 570/571 out of Prince George. In addition, assignment 570 was created to operate in turn service out of Williams Lake to Potter, returning to Williams Lake on the Lillooet Subdivision. The Union further alleges that changes in train service were made on Lillooet and Squamish Subdivisions contrary to article 132 (Material Changes in working Conditions).

The Company denies the Union's allegations and contends that no material change notice was required in the above instances, Article 132.1(1) applies.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) J. HOLLIDAY	**(SGD.) D. CROSSAN**
GENERAL CHAIRMAN	**FOR: DIRECTOR HUMAN RESOURCES**

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, Prince George
K. Morris	– Sr. Manager, Labour Relations, Edmonton
B. Laidlaw	– Manager, Labour Relations, Winnipeg

K. Hutchinson – Auditor, Edmonton
D. Rechsteiner – Trainmaster, Smithers

There appeared on behalf of the Union:
J. Holliday – General Chairman, North Vancouver
W. Martin – Local Chairman, North Vancouver
M. Braaten – Vice-Local Chairman, North Vancouver
G. Geddes – Local Chairman, Prince George

AWARD OF THE ARBITRATOR

The Union grieves two separate operational adjustments made by the Company. It alleges that the abolishment of assignment 472/473 out of Fort St. John, and its reassignment to operate out of Chetwynd is a material change which would have required proper notice to the Union and the invocation of the material change provisions of article 132 of the collective agreement. Secondly, as of the change of card on April 1, 2009, the Company abolished assignment 571/570, which operated for years from Williams Lake. It reversed that assignment to thenceforth be bulletined out of Prince George. The Union alleges that that change should have invoked the provisions of article 132, as in its view they constitute a material change. It makes the same allegation with respect to changes in service on assignment 570 in turn service between Williams Lake and Potter on the Lillooet Subdivision. The Union also grieves similar changes in train service made on the Lillooet and Squamish Subdivisions.

The Company raised a preliminary objection to the timeliness of the grievance relating to the change in service from the Fort St. John terminal. It maintains that the Union did not grieve properly within the time limits contained in article 104.(i) of the collective agreement. Given my conclusion on the merits of the grievance I find it

unnecessary to deal with that issue. If it were necessary to do so, however, I would be inclined to exercise my discretion under the **Canada Labour Code** to give relief against these time limits.

The pertinent provisions of article 132, for the purposes of these grievances, read as follows:

> 1 (a) The Railway will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article.
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> (b) The Railway will negotiate with the Union measures other than the benefits covered by Sections 2 and 3 of this Article to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in schedule rules considered necessary for the implementation of a material change is also subject to negotiation.
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> …
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> (l) This Article does not apply in respect of changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional reassignment of work or other normal changes inherent in the mature of the work in which employees are engaged.

As is evident from the foregoing provisions, not all changes in operations will justify the application of the material change provisions of article 132 of the collective agreement. That is reflected in the following passage of an award by Arbitrator Hope between these same parties dated September 25, 2006 concerning the cancellation of a yard assignment in Dawson Creek. Arbitrator Hope commented, in part:

> In particular, a “decline in business activity” which results from changes in service designed by the Railway to achieve an acceptable level of efficiency is not a distinction that takes the initiative outside of the spirit, if not the letter, of Article 132(1)(l). On the facts, the Railway took steps to reduce service in order to achieve a profitable balance between service and cost. That is a valid business reason for initiating the change and was optional only in the sense that the Railway could elect or be compelled to maintain the yard assignment despite its apparent inefficiency in terms of productivity. In my view, electing to discontinue what amounted to a subsidy of services to users in Dawson Creek was an initiative that fell within Article 132.(1)(l)

In the Arbitrator’s view the principle underlying the foregoing passage applies to all of the circumstances in relation to the grievances before me. The unchallenged representation of the Company is that mill closures, and resulting losses in freight traffic significantly impacted the Company in all of the areas where the operational changes were made, and in fact necessitated the operational changes. The Company refers the Arbitrator to the closure of Canfor’s Chetwynd saw mill and its plywood mills in Fort Nelson in early 2008. The Company estimates a reduction of some 200 car loadings per month from Chetwynd and approximately 250 car loadings per month from Fort Nelson. While it appears that there was some temporary relief which delayed the eventual changes, by the summer and fall of 2008 the Company was compelled to make the operational changes planned.

Similarly, with respect to the changes on the Squamish, Lillooet and Prince George territories, grieved on April 15, 2009, the Company cites substantial declines in traffic, caused by a reduction in production at Canfor’s Quesnel operation, in operations at the Rustad and Prince George saw mills, as well as at Vavenby, Grande Prairie, Houston and Radium. Additionally, the Company notes the closure of Ainsworth Lumber in Lillooet effective July 4, 2009.

The Arbitrator can appreciate the Union's perspective. Clearly these changes have had adverse effects on employees who had previously been home terminalled, with their assignments, in a stable fashion for many years. The fact remains, however, that the parties' own collective agreement, as articulated in article 132(1)(l), reflects an understanding that changes brought about by fluctuations in traffic and changes inherent in the nature of the work performed by railway employees do not constitute material change for the purposes of the required notice and the process for minimizing adverse impacts contemplated under the provisions of article 132. That articles is simply not intended as insurance for employees against the impact of market realities beyond the control of the Company.

I am satisfied that on the material before me the Company has amply demonstrated that the changes implemented fall under the exception to the general provisions of article 132 of the collective agreement. The grievance must therefore be dismissed.

June 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR