CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3945

Heard in Montreal Thursday, 14 October 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The bulletin and subsequent operation of assigned through freight service (assignments 808 A&B), home stationed at Edmonton, Alberta operating on either the Camrose, Three Hills, Vegreville, Blackfoot and Wainwright Subdivisions.

COMPANY'S STATEMENT OF ISSUE:

On May 29, 2009 the Company advertised two (2) through freight assignments, train 808 A&B, to service our customers on the Vermeil/Blackfoot Subdivisions, or Camrose/Brazeau/Three Hills Subdivisions or the Wainwright Subdivisions, primarily for, but not limited to, spotting and picking up grain traffic at various customer locations.

The Union alleges the operation of such assignments constitutes a violation of articles 56, 57.3, 60.2, 60.3, 64.25, 89 and Addendum 79 of agreement 1.2 governing locomotive engineers.

The Company disagrees with the Union's contentions.

FOR THE COMPANY:
(SGD.) P. PAYNE
FOR: VICE-PRESIDENT, HUMAN RESOURCES

There appeared on behalf of the Company:

K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. VanCauwenbergh	– Director, Labour Relations, Toronto
D. Brodie	– Manager, Labour Relations, Edmonton
P. Payne	– Labour Relations, Edmonton
T. Brown	– General Manager Operations, Winnipeg

And on behalf of the Union:

M. A. Church	– Counsel, Toronto

T. Markewich – Sr. Vice-General Chairman, Edmonton
B. R. Boechler – General Chairman, Edmonton
R. A. Hackl – Vice-General Chairman, Edmonton
T. Beaver – General Chairman, CP Lines East, Oshawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that on May 29, 2009 the Company bulletined two freight assignments, to be operated Conductor-Only, home stationed at Edmonton, Alberta. The assignments, referred to as Train 808 or the Velocity Train, were intended to operate to service three one hundred-car grain elevators located at Marshall, Unity and Trochu/Equity, Alberta. In essence the two assignments would operate to the three grain elevators as follows: to service the grain elevator at Marshall Train 808 would operate entirely over the Vegreville Subdivision to Vermillion and thereafter to Marshall on the Blackfoot Subdivision. Previously work on the Blackfoot Subdivision was performed by train crews from North Battleford. Secondly, the assignment would operate over the Wainwright West Subdivision to Wainwright, then onwards to Unity over the Wainwright East Subdivision. The latter subdivision has been historically serviced by locomotive engineers home terminalled at Biggar. Finally, Train 808 operates over the Wainwright West Subdivision and Camrose Subdivision to Mirror and thereafter onwards to Trochu/Equity over the Three Hills Subdivision. Historically the Three Hills Subdivision has been serviced by locomotive engineers home terminalled at Calgary.

The Union’s fundamental position is that the Company has, in what it maintains is an unprecedented initiative, assigned work on an adjacent subdivision to Edmonton

based crews, work which it maintains is within the exclusive jurisdiction of locomotive engineers home terminalled at North Battleford, Biggar and Calgary. More particularly, the Union maintains that it is not open to the Company to assign work on the Blackfoot Subdivision, the Wainwright East Subdivision or the Three Hills Subdivision to Edmonton based locomotive engineers and their Edmonton based crews.

For purposes of simplicity this award will deal with the provisions of both collective agreement 1.2 governing locomotive engineers and collective agreement 4.3 which governs conductors. The Union asserts that both collective agreements have been violated in a number of their provisions and that the agreements themselves do not allow the Company to make the assignments which it did in establishing the Velocity Train. Alternatively, the Union submits that under both collective agreements the change which was implemented must, at a minimum, require that the Company give notice to the Union with respect to a material change, triggering the provisions which it maintains should apply to protect the interests of locomotive engineers and conductors at North Battleford, Biggar and Calgary adversely affected by the change in assignment.

The Company bases its position in substantial part on the provisions of article 57.3 of collective agreement 1.2. That article reads as follows:

> **57.3** Except when otherwise arranged between the General Chairman of the B. of L.E. and the appropriate officer of the Company, the following will apply when establishing the home station of assigned or unassigned service.
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> **(a)** Trains operating over territory entirely under the jurisdiction of one home station will be manned from that station.

(b) Trains operating over only a portion of a subdivision will be manned by the home station from which the run begins.

(c) Trains operating over territory under the jurisdiction of two or more home stations and running between two home stations will be manned from the station having the greatest amount of mileage in the territory over which the trains operate.

(d) Trains operating over territory under the jurisdiction of two or more home stations and only touching one home station will be manned from that station.

(e) Trains which operate over territory of two or more home stations but do not touch any home station will be manned from the station having the greatest amount of mileage in the territory over which trains operate.

(f) Where work trains are to be established operating over territory under the jurisdiction of 2 or more home stations, the General Chairman and the appropriate Officer of the Company will, when practicable, make the necessary arrangements to equalize the mileage between such home stations.

The Company first relies on sub-article (b) of article 57.3. It notes that the Velocity Train which begins at the home station of Edmonton only operates on a portion of the Blackfoot, Wainwright East and Three Hills Subdivisions. On that basis it maintains that in accordance with article 57.3(b) Edmonton is the home station that is contemplated for the assignment in question, to the extent that it involves travel over a portion of a subdivision in each of the three possible destinations.

Alternatively, the Company cites sub-article (d) of article 57.3. It notes that that provision allows a train to operate over the territory which is under the jurisdiction of two or more home stations and touches only one home station, which is to be the home station for that assignment. The Company notes that Train 808 originates at Edmonton and never touches another home station but does operate over subdivisions under the

jurisdiction of two or more home stations. On that basis it submits that it was entitled to construct the assignment as it did, being home terminalled at Edmonton.

The Company also maintains that the change in assignments at a home terminal, which is what occurred with respect to the establishing of the Velocity Train, is plainly not a material change, but rather it is an exception to the material change provisions of article 89.6 of collective agreement 1.2 in that it is simply part of “other normal changes inherent in the nature of the work in which locomotive engineers are engaged.” On that basis the exception provided in article 89.6 would not allow the establishing of the Velocity Train to be fairly characterized as a material change requiring notice under article 89 of the collective agreement. The same would apply to the mirror provisions of collective agreement 4.3.

The Company maintains that because Train 808 was constituted as a regular assigned service, rather than unassigned or pool service, there is nothing in the collective agreements which require the Company to restrict the work of its crew to a single subdivision. By way of comparison, it cites to the Arbitrator’s attention the provisions of article 43.3 of collective agreement 4.3, which read as follows:

> **43.3** Train service employees in chain gang crews in unassigned service will be assigned to regular subdivisions, and will be kept on those subdivisions, except in emergency on account of shortage of crews they may be required to go on another subdivision, in which case they must be changed off with the first unassigned train service employees on that subdivision met en route.

The Company maintains that the parties adverted to the fact that employees in pool service or other unassigned service are to be assigned and kept on their regular subdivisions, save certain defined exceptions. It maintains that the same restriction was not fashioned for employees in assigned service, which is the case of Train 808. On that basis it argues that there is no language in the collective agreements to prevent the assignment that was made. It further maintains that prior awards of this Office have sustained that conclusion, including **CROA&DR 3459** and **CROA 3332**.

The fundamental position of the Union is that historically home terminals have defined the jurisdiction over which crews from a home terminal are to operate, namely over the adjacent subdivision or subdivisions, as the case may be. It submits that in the case at hand the exclusive jurisdiction to operate to Marshall on the Blackfoot Subdivision resides with locomotive engineers and conductors home terminalled at North Battleford, and for Unity home terminalled at Biggar and for Trochu/Equity, home terminalled at Calgary. Very simply, the Union maintains that there is no precedent for employees home terminalled at Edmonton handling work on the Three Hills Subdivision, the Wainwright East Subdivision or the Blackfoot Subdivision, work which they maintain properly belongs to Calgary, Biggar and North Battleford crews respectively.

Additionally, the Union relies, in part, on the terms of the Special Agreement negotiated between the parties in relation to the closing of terminals at Hanna and Mirror, Alberta. It notes that that agreement, dated July 25, 1990 expressly provides:

"The work south of Mirror on the Three Hills Subdivision will be transferred to Calgary home station."

The agreement further provides: "The following will apply at Calgary home station: … Trains operating in Grain Block Service on the … Three Hills Subdivision will be manned by the joint spareboard."

The Union submits that the language of the Special Agreement negotiated by the parties in 1990 plainly reserves to Calgary based crews grain work on the Three Hills Subdivision, work which cannot, it submits, be given to Edmonton based crews. Alternatively, the Union submits that the changes implemented by the Company, departing radically as they do from long-established historic patterns of work jurisdiction, can only be implemented by giving a material change notice to the Union, with all related protections coming to bear with respect to minimizing adverse impacts on the employees affected.

In further support of its position the Union tables before the Arbitrator lists dating back to 1931 which describe home terminals and the territories for which those home terminals are exclusively responsible. For example, one document makes the following notation under the heading "Calgary": "Controls all runs between Calgary and Hanna. …" The Union acknowledges that some of the terminals contained within the lists have in fact ceased to exist and that some of the subdivisions themselves have been abandoned. It nevertheless maintains that the lists support the Union's view that the

concept of the home terminal having work ownership in relation to an adjacent subdivision is one which is clearly historically established within the documents governing operations over many decades. The Union also notes article 37.9 of collective agreement 4.3 as confirming the notion of work on a subdivision being identified with a particular home terminal. That article provides, in part:

> … a train service employee assigned to a work train assignment will be required to fill such assignment on the subdivision(s) assigned to the home terminal of the employee so assigned; the assignment will be similarly manned on subsequent subdivisions shown in the original bulletin.

Finally, the Union does rely on the provisions of article 43.3 of collective agreement 4.3 which deals with the assignment of conductors and assistant conductors and reads as follows:

> **43.3** Train service employees in chain gang crews in unassigned service will be assigned to regular subdivisions, and will be kept on those subdivisions, except in emergency on account of shortage of crews they may be required to go on another subdivision, in which case they must be changed off with the first unassigned train service employees on that subdivision met en route.

After a careful review of the facts the Arbitrator has considerable difficulty with a number of the positions argued by the Union. Firstly, I consider it significant that collective agreement 4.3 expressly provides in the provisions of article 43.3 that work on a subdivision is to be exclusive to employees in chain gang crews or in unassigned service. What is notably absent from that article is any suggestion that employees in assigned service must “be kept on those subdivisions”, as is the case with employees in unassigned service, such as pools or spareboards.

Secondly, the jurisprudence cited by the Company does, in my view, clearly support its position. In fact it contradicts the Union's position that there has never been any cross-subdivision assignment of employees.

CROA&DR 3459 involved the establishing of road switcher assignments out of the terminal of Brandon, Manitoba. Those assignments were required to work, in part, on the Carberry and Rivers Subdivisions. The arbitrator rejected the Union's claim that work on the Carberry and Rivers Subdivisions must be exclusive to Winnipeg based crews, so that the assignment was improper. In relying on the provisions of article 57.3(d) of collective agreement 1.2 the arbitrator made the following comments:

> Given the language of article 57.3 (b), it can scarcely be disputed that the Company would be at liberty to assign a Brandon based crew to perform switching at locations such as Shilo and Carberry, since that assignment would involve the road switcher operating over only a portion of the Carberry Subdivision. The collective agreement is clear that such an assignment is to be manned by the home station from which it begins. In the Arbitrator's view the situation is no different by reason of the fact that the road switcher assignment in fact operates over only a portion of the Rivers Subdivision, between Petrel Junction and Rivers. The spirit of article 57.3 (b) appears relatively clear: where an assignment involves operating over only a section of a subdivision, such an assignment can be manned by the home station from which the run begins. The article represents a mutual recognition by the parties that where only a portion of a subdivision is being serviced, the home station of convenience can be looked to supply crews for that assignment. That is, moreover, consistent with the general understanding of the parties that a road switcher can operate within a thirty mile radius of its home terminal.
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> In the result, whether from a literal or from a purposive standpoint, the position of the Company must be sustained. Literally, the assignments which are the subject of this grievance operate over only a portion of the Rivers Subdivision, and can therefore be manned from the "home station from which the run begins". From a purposive standpoint, the work in question is within the ambit of what the parties have contemplated to be within the thirty mile radius assignment of road switchers, as recognized in article 1.7 of the collective agreement.

A second decision of this Office which is of note is **CROA 3332**. In that case the Company established an assignment at the home station of Melville, Saskatchewan. It effectively reassigned the operation of Train 115 and 114 to Melville, work previously shared with crews from the home station of Biggar. The Union objected that the Company could not give the assignment to crews home terminalled Melville without its agreement and that, in the alternative, the assignment was a material change of home station within the provisions of article 89 of the collective agreement.

The arbitrator disagreed. With respect to the application of article 57 of the collective agreement the arbitrator commented as follows:

> The Arbitrator has substantial difficulty with the first position argued by the Brotherhood. It appears clear that what article 57 purports to do is to deal with the establishing of home stations. Article 57.2 deals with the bulletining of positions out of newly established home stations and article 57.3 establishes a list of criteria governing establishing the home station of assigned or unassigned service runs. In that regard article 57.3(c) reads as follows:
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> > **57.3** Except when otherwise arranged between the General Chairman of the B. of L.E. and the appropriate officer of the Company, the following will apply when establishing the home station of assigned or unassigned service.
> >
> > …
> >
> > **(c)** Trains operating over territory under the jurisdiction of two or more home stations and running between two home stations will be manned from the station having the greatest amount of mileage in the territory over which the trains operate.
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> Clearly, the action of the Company which is the subject of this grievance does not involve establishing a home station. Melville, like Biggar, has long been established as a home station in the Company's operations. What has occurred is the reassignment of work in relation to trains 114 and 115 exclusively to employees home stationed at Melville. The Company defends its decision on the basis of the express provisions of article 57.3(c), noting that the greatest amount of mileage in the assignments in question is in territory belonging to the home station of Melville. In that circumstance its representative submits that it was entirely proper to make the assignment at is did.

> The Arbitrator must agree. This is plainly not a case of establishing a home station in the sense contemplated by article 57.1. I cannot accept the submission of the Brotherhood's representative that the determination of a home station is dependent upon the configuration of runs. The fact that article 57.1 contains the expression "the headquarters of locomotive engineers on various runs" does not, of itself mean that the agreement of the locomotive engineers' General Chairman must be obtained by the Company any time it contemplates changing the assignment of runs from employees at one home station to employees at another home station. So radical a limitation on the prerogatives of the Company would, in the Arbitrator's view, require clear and unequivocal language to support it. No such language is to be found in the provisions here under consideration.

With respect to the material change allegation the following comments of the arbitrator appear in that award:

> On what basis can it be said that there has been a change of home stations in the case at hand? Employees home stationed at Melville and Biggar before the change proposed by the Company will remain home stationed at those two locations, respectively after the change. What has changed is not the location or identity of a home station, but rather the assignment of work to employees home stationed at Melville and Biggar. I must agree with the Company that such changes are the everyday stuff of railway operations. In that regard article 89.6 of the collective agreement specifically provides as follows:
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> > **When Material Change Does Not Apply**
> >
> > **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.**
> >
> > (emphasis added in the original award)
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> 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, 2973**).

> For all of the reasons related above, the Arbitrator is satisfied that the Brotherhood has not established that the Company has violated article 57.1 relating to the establishing of home stations, or that the adjustment in operations whereby the assignments in relation to trains 115 and 114 have been transferred entirely to employees home stationed at Melville is a material change within the meaning of article 89 of the collective agreement. For all of these reasons the grievance must be dismissed.

(See also **CROA 2101**.)

Based on the foregoing jurisprudence, as well as on the wording of the collective agreements reviewed above, the Arbitrator cannot sustain the general position of the Union to the effect that all work on a single subdivision must be performed by the employees from the home terminal identified with that subdivision. While that might be true for employees in pool or other unassigned service, there is no language in the collective agreements which would extend that restriction to employees in regular assigned service. It is not disputed that the Velocity Train which is the subject of these grievances is an assigned service. Nor, for reasons touched upon in the cases cited, can the Arbitrator accept the alternative argument of the Union that in all cases the change implemented by the Company must be viewed as a material change, with one exception discussed below. In my view the assignment of work to and from a particular home terminal is well recognized as being within the concept of "… normal changes inherent in the nature of the work in which [employees] are engaged," the exception to the material change obligation found in both collective agreements.

However the Arbitrator has greater difficulty with the position of the Company as relates to the removal of the grain work in question from crews based at Calgary. For

reasons which they best appreciate, the parties fashioned the Special Agreement concerning the closing of the home stations of Hanna and Mirror in 1990. In doing so they expressly stipulated that “trains operating in Grain Block service on the … Three Hills Subdivision[s] will be manned by the joint spareboard.” , expressly referring to the spareboard at the Calgary home station.

What is the import of that agreement? Can it be suggested that the Company has undertaken to perpetually assign the grain block service on the Three Hills Subdivision to spare employees at the Calgary home station, given that the Special Agreement has no date of termination or notice provision by which it can be terminated? I think not. Clearly, in the normal course, the Company could initiate a change away from the restrictions of that Special Agreement as part of its normal prerogative to manage its business. However, in the Arbitrator’s view, given the express stipulations of the Hanna and Mirror Special Agreement, any change in respect of the handling of grain on the Three Hills Subdivision must be dealt with through a proper material change notice. At a minimum, it must be deemed that employees who are generally entitled to the protections of the Special Agreement can only be deprived of them through the material change provisions of the collective agreement which allow for the fashioning of terms which minimize the adverse impact of any such additional change. To conclude otherwise would effectively nullify the Special Agreement in respect of Hanna and Mirror, itself fashioned to minimize adverse impacts, in part, on employees home terminalled in Calgary. I am, therefore, compelled to accept the alternative argument of the Union concerning the protection of Calgary based crews.

For the foregoing reasons the grievances of the Union under both collective agreements are allowed, but only in part. The Arbitrator finds and declares that the Company did not violate either collective agreement in establishing Velocity Train 808 to service Marshall and Unity out of Edmonton, using crews home terminalled at Edmonton. The assignment so established is consistent with the provisions of article 57(d) of the locomotive engineers' collective agreement, as found above, nor does it do violence to the provisions of article 43.3 of the collective agreement governing conductors. As reflected in **CROA 3332** and **CROA&DR 3549**, it was open to the Company to establish regular assigned service which would involve employees home terminalled at Edmonton operating beyond their home subdivision and partially over adjacent subdivisions.

The Arbitrator cannot, however, sustain the Company's position with respect to the assignment established in relation to Train 808, to the extent that it does involve taking away grain block service assignments from Calgary employees in a manner contrary to the express provisions of the Hanna and Mirror Special Agreement. The Arbitrator therefore finds and declares that the Company did violate the provisions of article 89 of collective agreement 1.2 and article 139 of collective agreement 4.3 by failing to give a proper material change notice with respect to establishing an assignment which effectively negates certain specific protections of the Special Agreement in relation to the closure of the home stations of Hanna and Mirror. The Arbitrator therefore directs that the Company give the appropriate notices to the

respective Committees of Adjustment and deal in good faith with the Union with respect to the related process under both collective agreements.

I retain jurisdiction in the event of any dispute concerning the interpretation or implementation of this award.

October 21, 2010

(signed) MICHEL G. PICHER
ARBITRATOR