

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

CASE NO. 3949

Heard in Calgary, Wednesday, 10 November 2010

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The interpretation of Article 75 regarding the application of On The Job Training.

JOINT STATEMENT OF ISSUE:

Conductors Derkson and Chapman, selected for the Locomotive Engineer Training program, held positions on the Trainman's Common Spareboard at Brandon. While assigned to the Trainman's Common Spareboard these employees were required to perform On The Job Training as Locomotive Engineer Trainees when called for road work from the spareboard.

The Union contends that under the provisions of article 75.06 a Locomotive Engineer Trainee unable to hold work as a spare or regularly assigned Conductor, at their respective terminal will be trained as an additional employee in the locomotive.

The Union contends that Conductors Derkson and Chapman fall within the parameters of Article 75.06 and should have been trained as an additional employee in the locomotive.

FOR THE UNION:
(SGD.) D. OLSON
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) D. E. FREEBORN
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Corrigan	– Labour Relations Officer, Calgary
R. Bay	– Manager, Running Trades Training, Calgary
G. Squires	– Trainmaster, Brandon
D. Freeborn	– Manager, Labour Relations, Calgary
A. Azim Garcia	– Director, Labour Relations, Calgary

There appeared on behalf of the Union:

M. A. Church	– Counsel, Toronto
D. Olson	– General Chairman, Calgary
D. Fulton	– Vice-General Chairman, Calgary
B. Weisgerber	– Local Chairman,

AWARD OF THE ARBITRATOR

The facts pertinent to this grievance are not in substantial dispute. Grievors Dean Chapman and Dale Derkson of Brandon entered the locomotive engineer training program on October 9, 2006. Upon completing the program they returned to Brandon for their rules instructions. In November of 2006 they completed the initial mechanical and rules instruction and also completed the phase 2 one-on-one training in which they rode as the third person in the cab of a locomotive. Following that they were placed on the Brandon trainpersons common spareboard. The Company then informed them that they would participate in on-the-job training, which means that they would train while working as a conductor along with a locomotive engineer, and that they would no longer have one-on-one training as the third person in the cab of a locomotive. In fact between November 27, 2006 and January 8, 2007 trainees Chapman and Derkson worked off the trainpersons common spareboard at Brandon and, as trainees, were required to accept proper calls for any work from the Brandon trainpersons common spareboard in either road or yard service in the expectation that they would perform on-the-job training during their duty.

It is common ground that neither trainee Chapman nor trainee Derkson could hold, by the exercise of their seniority, work as a conductor at their home terminal. The Union maintains that given that circumstance they should have been trained on a one-on-one basis in accordance with the terms of article 75.06 of the collective agreement. In other words, in the Union's view, they should not have been given on-the-job training, but should have undergone the training that would have been given to the third person

in the cab of the locomotive. The Company submits that there is no language in the collective agreement which prevented it from giving trainees Chapman and Derkson on-the-job training, as was done.

The dispute between the parties concerns the interpretation of a number of provisions of article 75 of the collective agreement. That article provides, in part, as follows:

- 75.01** The term Trainperson/Yardperson is in recognition of the Interchangeable Rights Agreement.
- 75.02** To be eligible for training, a Trainperson/Yardperson must have at least two years of cumulative service in Road and/or Yard Service.
- 75.03** After being scheduled for training, Locomotive Engineer Trainees shall be required to work in Road Service at their home terminal, including Road or Common Spare boards, when and where their seniority entitles them to do so.
- 75.04** Upon completion of the initial classroom and technical portion of the Locomotive Engineer Training Program, trainees whose seniority permits them to hold work as a Conductor at their respective home terminal, will return to that position. They will perform the duties of Conductor and when those duties permit, and they are working with a qualified trainer, they will receive on the job training to become qualified as a Locomotive Engineer.
- 75.05** The Company in consultation with the Union, will identify subdivisions or subdivision runs upon which it is impractical to provide on the job training.
- 75.06** When seniority does not permit a Trainee to hold work as a spare or regularly assigned Conductor at their respective terminal, as outlined in Clause 75.03, when required they will train as an additional employee in the locomotive and will be compensated at the rate established in the same manner as outlined in Clause 75.12.
- 75.07** The Company reserves the right to train Locomotive Engineers on a one-to-one basis at its discretion.
- 75.08** Unless as expressly provided in Clause 75.04, once training has commenced in the initial mechanical and rules instructions classes, trainees will not be required to work as a Trainperson or Yardperson

during the training period. Time engaged during the training period shall not interrupt the candidate's continuous employee relationship.

The parties are not in dispute as to the application of article 75.04. They agree that when an employee has completed the classroom and technical portion of the training program, if that employee's seniority allows them to hold work as a conductor at their home terminal they are to assume that position and when assigned as a conductor they are, while on duty, to perform on-the-job training (OJT) to become qualified as a locomotive engineer.

The dispute concerns employees whose seniority does not allow them to hold work as a conductor at their home terminal, as is the case with trainees Chapman and Derkson. The Union submits that article 75.06 gives to those trainees an absolute right to be trained as an additional employee in the locomotive, and not on the basis of on-the-job training as the Company has done. As the Union would have it, article 75.04 clearly indicates that only employees able to hold work as conductors, by the exercise of their seniority, are to assigned to OJT. It argues that employees who would fall under article 75.06 are to be trained only on the basis of being the third person in the cab.

The Arbitrator has considerable difficulty with the Union's interpretation. Firstly, it does not appear disputed that the language of article 75.04 and article 75.08 has been in the collective agreement since 1999. The unchallenged representation of the Company is that through three negotiations of the collective agreement the Union has never grieved the Company's practice of utilizing common spareboard employees to be

called as conductors and then required to train as locomotive engineers on the basis OF on-the-job training, and not as a third person in the cab. In that regard it gives the example of employees at Moose Jaw, Saskatchewan, Medicine Hat, Alberta and Brandon, Manitoba.

On what basis can it be argued, after some eleven years of the application of the language of article 75 of the collective agreement in accordance with the Company's interpretation, that in fact employees who do not fall under article 75.04 as able to hold conductors' positions must be trained on a one-on-one basis, presumably as of right? Firstly, from a purposive basis, it is difficult to appreciate why the distinction would be drawn between senior employees able to hold conductors' positions and more junior employees who do not have sufficient seniority to do so, for the purposes of being excluded from the option of doing on-the-job training as opposed to one-on-one training. In that regard it should be appreciated that employees at locations such as Brandon, including the grievors themselves, in fact have substantial seniority, albeit they choose to work at a location which utilizes a common spareboard.

When close attention is paid to the language of article 75 which deals with one-on-one training, it is clear that that cannot be claimed as a right. Firstly, the categorical language of article 75.07 confirms that the Company has an absolute right to determine whether it will or will not train locomotive engineers on a one-on-one basis "... at its discretion." When that language is paired with the phrase "when required" in article 75.06 dealing with employees being assigned as an additional employee in the

locomotive for one-on-one training, it is difficult to draw the conclusion that it was intended that all employees who cannot exercise the seniority to hold conductors' work must be trained on a one-on-one basis.

In the context of the foregoing provisions the Arbitrator is compelled to accept the argument of the Company that there is no language within the provisions of article 75 which would expressly or, in my view implicitly, prevent the Company from assigning employees in the position of the grievors to work as conductors for the purposes of pursuing on-the-job training in furtherance of their eventual qualification as locomotive engineers.

Further, when reference is had to the overall context of article 75 of the collective agreement, it is instructive to note that article 75.11 contains a chart which represents the seven phases of locomotive engineer qualification. Phase 3, which follows the initial mechanical rules instruction and two week one-on-one training is described as follows: "Working On The Job. Training with a qualified locomotive engineer instructor (max 18 months)." While Phase 5 makes reference to "unique training where applicable.", there is nothing in the chart to suggest that one-on-one training is the method to be used for employees on common spareboards. Article 75.11(e) also notes that the Union gained for employees a one time bonus payment of \$1,000 for employees who participate in on-the-job training in Phase 3, upon the completion of that phase. In my view the more probable inference is that the bonus was to be as widely available as possible.

Where all of the elements are considered, the Arbitrator has substantial difficulty accepting the Union's interpretation. Firstly, it is an interpretation which has not been applied and apparently has not been asserted through any grievance over a number of years, through repeated renewals of the collective agreement without change. Secondly, for all of the reasons related above, the language and scheme of article 75 of the collective agreement clearly preserve to the Company discretion, presumably to be used in times of extreme need, as to when it will resort to one-on-one training. Finally, there is no language within article 75 itself which would prohibit the employer from utilizing on-the-job training for any trainee. The fact that that is explicitly explained with respect to persons holding conductor's positions under article 75.04 does not mean that it cannot apply elsewhere. At most, article 75.06 allows the Company "when required" to resort to one-on-one training for employees on common spareboards who cannot hold spare or regularly assigned conductors positions when it necessary to do so. As is made clear by article 75.07, that judgement is entirely in the discretion of the Company.

In the result, I cannot find that the Union has established any violation of the provisions of article 75 of the collective agreement. The grievance is therefore dismissed.

November 15, 2010

(signed) MICHEL G. PICHER
ARBITRATOR