CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4012

Heard in Montreal, Thursday, 12 May 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Claim on behalf of the members of the Quebec Utility No. 1, Quebec Utility No. 2 and Quebec thermite Welding Crews.

JOINT STATEMENT OF ISSUE:

On August 12, 2010, the members of the above mentioned crews were laid off and the TP-QC Low Density Rail Crew was bulletined. The new schedule began on August 17, 2010. As a result of the change the workers lost 16 hours of wages. A grievance was filed.

The Union contends that the Company's actions were in violation of section 8.1 – 8.3 and 10.2 – 10.4 of the collective agreement.

The Union requests that the grievors be compensated for the 16 hours of wages lost as a result of the schedule change in question.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:
(SGD.) M. CHERNENKOFF
ASSISTANT LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

M. Chernenkoff	– Assistant Labour Relations Officer, Calgary
M. Goldsmith	– Labour Relations Officer, Calgary
S. Smith	– Labour Relations Officer. Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa
A. R. Terry	– Vice-President, Ottawa
A. Della Porta	– Director, Lachute

AWARD OF THE ARBITRATOR

The Union grieves the manner in which the Company changed the working hours of Quebec based employees, namely the Quebec Utility Crew No. 1, the Quebec Utility Crew No. 2 and the Quebec Thermite Welding Crew. It is common ground that through early August of 2010 those crews worked a four-and-three work schedule. Thereafter they were purportedly laid off, with their jobs abolished, to then effectively bid on work in a five-and-two work schedule within what became the Quebec Low Density Rail Crew.

The Union submits that what transpired is in fact something that has occurred for many years, but that it has always previously happened by simply reorganizing the crews and changing their work schedule in such a way that there is no loss of revenue to them. In the instant case, however, by purportedly abolishing the assignments of the three crews and compelling them to bid onto the newly established Low Density Rail Crew, in the changeover from a four-and-three work schedule to a five-and-two work schedule, the employees found themselves losing sixteen hours of work which they were effectively unable to recover. To put it simply, the Union maintains that what occurred was a change in the work cycle of crews effectively disguised as job abolishments. The Union's representatives invoke the following paragraph found in section 8.1(c) of the collective agreement:

> Notwithstanding the above, when the work cycles of a crew change, the employee will not suffer lost wages through the course of fulfilling the requirements of eighty (80) regular hours for the pay period.

The Company submits that it was open to it to abolish the assignments as it did, thereby freeing the employees to exercise their seniority as they might choose to do or, as some did, to revert to alternative positions, used banked overtime or take annual vacation pending the commencement of their work on the Low Density crew.

The Arbitrator can readily appreciate the perspective of the Union. It would appear that the employees who are the subject of this grievance have, virtually on an annual basis for many years, transitioned from working in their three separate crews into the Low Density Rail Crew in a relatively seamless way, without losing any earnings. After close consideration of the history and facts before me, I am compelled to agree with the Union that this is a case where estoppel has its proper application. There can be no doubt but that the language of the collective agreement, strictly interpreted on the basis of its phrasing, would support the position of the Company. The facts do not involve a change in the work cycles of a crew or several crews, whether that is viewed from the standpoint of the current year or in years past. In years past the crews were effectively dissolved and melded into a single crew which had a different work cycle. As noted above, that was effectuated in such a way as to avoid any loss of revenue to the employees, something which was not done in August of 2010.

I am satisfied that the practice of many years, apparently followed by the Company virtually without exception, gave rise to a reliance on the part of the Union and

an understanding that the Company's practice of melding the three crews into one at the end of the season, and effectively changing the work cycles of the employees, would continue to operate as it had. For the Company to revert to its strict rights under the collective agreement, abolishing the three crews and posting positions in the melded crew in such a way as to occasion a loss of wages to the employees concerned, in circumstances where the Union can no longer negotiate any different arrangement, does give rise to an equitable estoppel. I must agree with the representations of the Union that on the ground little has changed from what occurred in previous years. However, by resorting to the abolishing of crews rather than continuing the past practice of melding them so that the notwithstanding clause of section 8.1(c) would apply to them, as occurred in the past, the Company has effectively betrayed its long-standing representation by conduct that the notwithstanding clause would apply to the employees affected by the annual change involving the Quebec Utility and Thermite Welding crews.

The grievance is therefore allowed. The Arbitrator directs that the employees affected by the Company's action be compensated in an amount equal to sixteen hours at the regular rate of the positions which they held in August of 2010.

May 16, 2011

(signed) MICHEL G. PICHER
ARBITRATOR