CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4209

Heard in Montreal, May 15, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Grievance advanced by the Union in response to the Company's forcing employees to Spence Yard.

JOINT STATEMENT OF ISSUE:

The parties negotiated a Weekly Placement Agreement regarding, *inter alia*, the placement of employees in Spence Terminal. In the time since the Weekly Placement Agreement was negotiated, employees have been forced to Spence Yard through the weekly placement when the first out spare person should have received the call. The Union contends that the Company has refused to provide to these employees meals and lodging expenses, and has failed to provide transportation or allowance in lieu thereof, to employees. The Union contends that this is contrary to the terms of the Collective Agreements, the Spence Agreement and Weekly Placement Agreement.

The Union further contends that the Company has refused to pay 100 mile deadhead to Spence Yard on the first day and 100 mile deadhead on last day to return back to the home terminal as required by the Spence agreement.

The Union seeks a declaration that the Company has breached the Collective Agreements, Weekly Placement Agreement and the Spence Agreement, and that the Company cease and desist its ongoing breaches thereof. The Union seeks an order that all employees be made whole for their losses due to the Company's practice of forcing employees to Spence Yard, in addition to such other relief that the Arbitrator deems necessary in the circumstances.

The Company disagrees with the Union's position, and seeks an order that the grievance be dismissed. The Company contends that the expenses set out in the Spence Agreement were not contemplated for employees receiving a position by bid or by force due to seniority provisions.

FOR THE UNION:
(SGD.) B. Hiller
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

M. Thompson	– Manager Labour Relations, Calgary
D. Humphrey	– Trainmaster, Toronto
J. Dorais	– Director Crew Resources CMC, Calgary
B. Sly	– Director Labour Relations, Calgary
M. Chernenkoff	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
B. Hiller	– General Chairman, Toronto
B. Brunet	– General Chairman, Montreal
W. Apsey	– Vice General Chairman, Smiths Falls
J. Campbell	– Vice General Chairman, Toronto
D. Able	– General Chairman, Calgary
D. Olson	– General Chairman, Calgary
D. Fulton	– Vice General Chairman, Calgary
G. Edwards	– Vice General Chairman, Calgary

AWARD OF THE ARBITRATOR

This dispute involves the treatment of employees from the Toronto terminal who are assigned to work at Spence Yard, a facility which services a Honda manufacturing plant in Alliston Ontario. The Union submits that the Company's method of forcing certain employees to work at Spence Yard, and the failure to provide meal, lodging and travel expenses, is in violation of the Collective Agreements, as well as the Weekly Placement Agreement date May 11, 2005 and a document referred to as the Spence Agreement. The position of the Union is that under the Collective agreement, the Weekly Placement Process established in 2005 and the Spence Agreement when a vacancy arises at Spence the call should be given to the first out person on the spareboard, and that individual should be entitled to meals, lodging, travel expenses as

well as deadhead payments of one hundred (100) miles to and from Spence Yard and Toronto Yard.

Spence is an outpost to the Toronto terminal. It is subject to the terms of the May 2005 Crew Management Agreement which established Weekly Placement Procedures at Toronto terminal. It is common ground that all weekly crew changes take place at Spence, as elsewhere in the Toronto terminal, on each Monday morning at 0001. Regularly assigned positions are bulletined on Tuesday of each week and are bid on Thursday with assignments for the following Monday morning being confirmed on Friday.

Crucial to the instant dispute is the filling of what the parties refer to as an "unknown vacancy". For example, as posited by the Union, if an employee who holds an assignment at Spence successfully bids to work elsewhere, being awarded that position on a Friday to go into effect on the Monday morning, that individual's prior job at Spence is to be, in the Union's view, given to the first out employee on the spareboard with the employee concerned to receive meals, lodging, or alternatively travel allowance, as well as deadhead payments to and from Spence Yard and Toronto Yard. It does not appear disputed that the procedure advocated by the Union was in fact followed by the Company for a number of years. According to the Union's counsel matters changed with a letter from the Company dated June 20, 2006. That letter, addressed to the Union's Chairpersons reads as follows:

Dear Sirs,

This letter is with regard to the present situation in which automobile mileage and/or other incidental expenses, may be paid to Toronto based employees who are forced to positions at outpost locations or locations outside the Toronto Terminal limits.

In line with the implementation of the Weekly Placement Process, employees now receive positions by bid – or – in the case of no bids, employees are forced to positions, which is a strict seniority move to the position (this application is also commonly known as a defacto bid).
As such, it is the Company's position that expenses were never contemplated for employees receiving a position by bid, or by force due to seniority provisions. As such, the inconsistent practice of paying some expenses to Toronto based employees, in like circumstances, will conclude in line with crew change at 0001, on July 3rd, 2006.

Personal expenses will continue to paid for employees filling adhoc vacancies, which occur from time to time and are outside the Weekly Placement Process.

Sincerely,
F. Devine
Manager, Yard Operations

T. L. Glad
Manager, Road Operations

In effect, the above letter appears to have eliminated a practice which, it seems, continued uninterrupted from the inception of work at the Spence Yard upon the opening of the Honda plant in or about 1999 until late June of 2006.

As a preliminary position the Company questions the timeliness of the instant grievance. Its representative stresses that years have passed since the announcement of the Company's position on June, 2006, without the Union progressing the matter to this Office. He argues that in the circumstances the matter should be viewed as not being arbitrable by reason of the laches and excessive delay. With respect to the merits of the grievance, the position of the Company is well reflected in a passage from a letter

of understanding made between the parties, apparently in January of 2003. That passage reads as follows:

> Be advised that, local Company Officials and Union Officers have come to an impasse as to the application of providing any form of payment in the awarding/forcing of an individual to an outpost location. It is the Company's position that the awarding/forcing to an outpost is an exercise of seniority (senior may, junior must) and is viewed as being made by choice, and as such, there is no obligation on behalf of the Company to pay commuting allowances, deadheads or provide lodging.

Central to the instant dispute is the Company's position that when it is compelled to fill a vacant position at Spence which has received no bid, it is entitled to force an employee onto that position in what it characterizes, as of the letter of June 20, 2006, as a "defacto bid". It appears that the Company's reasoning in that regard is that what occurs is an exercise of seniority rights and obligations, an event which it characterizes as being the equivalent of a bid. That is important for the purposes of this dispute, as employees are not entitled to expenses in relation to a position which they choose to take by means of a bid.

With respect, the Arbitrator has some difficulty with the Company's position. While it may be that long standing practice has recognized that employees who choose to bid on assignments at a remote location are not entitled to compensation for their travel and accommodation in relation to that work, it is far from clear that what transpires in the forcing exercise resorted to by the Company can be fairly analogized to an employee freely biding on a remote position. Moreover, as regards the location of Spence, it appears clear that for period of some seven years the Company did in fact

treat employees who were effectively forced to work at Spence in respect of unbid vacancies as entitled to the payment of the expenses which are here claimed.

I find myself unable to agree with the Company's concept of the "defacto bid" which is essentially central to the position which it took in relation to its letter of June 20, 2006, and which is the linchpin of its argument in this grievance. To put the matter simply, the Company takes the position that employees who are forced to Spence are not entitled to expenses because they are deemed to have to move to Spence as a result of a bid. However, the fact that a given employee may be required to protect certain work by reason of their seniority is not, absent to any clear provision in the collective agreement to the contrary, the equivalent of an individual exercising the freedom of choice inherent in a bid. In my view the Company's concept of the "defacto bid" contained in the letter of June 20, 2006 is more creative than persuasive. It is not a compelling basis to depart from what was then seven years of consistent practice, a practice which I am satisfied reflected the true understanding of the parties.

Apart from the above conclusion on the merits of the dispute, which in my view must favour the Union's position, what is to be made of the issues of delay ? In my view the Company's position to the effect that the matter should viewed as inarbitrable, cannot prevail. While it is true that the matter here under consideration has been one of long standing dispute between the parties, there has never been any gesture on the part of the Union which can categorically be identified as abandonment of the grievance filed in October of 2008. Moreover, I am compelled to agree with counsel for the Union

that what is disclosed in the instant case is a recurring breach, such that the grievance can be said to validly stand for what are current and ongoing breaches of the collective agreement. That does not mean, however, that the Union can expect to achieve compensation over a period of several years during which it did not advance this dispute to final resolution in this Office. In fact, given the time which has passed, it is my view that the appropriate remedy in the instant case is to limit the Union's relief to a declaration from this Office, with obvious entitlement to the payment of the expenses it claims on a go-forward basis.

On the foregoing basis, the grievance is allowed, in part. While I am satisfied that due to the passage of time no order for compensation should be made, I do find and declare that the Company has violated the provisions of the collective agreement, the Weekly Placement Process Agreement and the Spence Agreement. I further find and declare that the Company's concept of the "defacto bid" as related in the letter of June 20, 2006 cannot stand, and that henceforth employees forced to Spence in the circumstances considered in this grievance are not to be treated as having bid to that location. For the balance of the term of the collective agreement they shall be treated as entitled to the expense payments which it appears, were consistently provided prior to June 20, 2006. At the conclusion of the Collective agreement the parties will obviously be in a position to consider whether they wish to re-negotiate or amend any of these provisions.

On the foregoing basis the matter is remitted to the parties. Should there be any dispute between them as to the interpretation or implementation of this Award, the matter may be spoken to.

May 17, 2013

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MICHEL G. PICHER
ARBITRATOR