CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4468

Heard in Calgary, June 14, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's alleged violation of Articles 27, 85, 86 and Addendum 101 of the 4.16 Collective Agreement along with the Extended Run Principles on November 28, 2009 when the Company began to unilaterally collapse the pools in Capreol and began to force employees to the spareboard because of a labour disruption as the Locomotive Engineers began a legal strike. This was done without any consultation or discussion with the Union.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On or about November 27, 2009 the TCRC represented Locomotive Engineers at Canadian National Railways engaged in a legal strike against the Company. Shortly before the job action began the Company began to collapse and abolish all regular assignments in violation of Articles 27, 85, 86 and Addendum 123 of the 4.16 Collective Agreement along with the Extended Run Principles.

As a result of the Company actions Conductor Mitchell Giroux suffered a loss of earnings and the Union seeks to have him made whole and compensated 588 constructive miles as set out in Item 2 of the Extended Run Principles.

The Union is seeking a significant remedy in accordance with Addendum 123 of the Collective Agreement in this instance as the Company continues to violate Article 51.

It is the Union's position that the Company blatantly and indefensibly violated Articles 27, 85, 86 and Addendum 123 of the 4.16 Collective Agreement along with the Extended Run Principles when the Company unilaterally collapsed all pools and abolished all assignments on or about November 27, 2009 without consulting the Union as set out in Article 27 of the 4.16.

The Company disagrees with the Union's contentions and declines the Union's request

FOR THE UNION:
(SGD.) J. Robbins
General Chairperson

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
D. Van Cauwenbergh	– Director Labour Relations, Toronto

C. A. Mackay – Superintendent Operations, Edmonton
S. Maltais – Executive Assistant, Edmonton

There appeared on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto
J. Robbins – General Chairman, Sarnia
J. Lennie – Vice General Chairman, Port Robinson

AWARD OF THE ARBITRATOR

The alleged violation occurred while the Teamsters Canada Rail Conference – Locomotive Engineers informed the Company on November 24th 2009 that they would exercise their legal right to strike at CN Rail effective at 00:01 hrs, Saturday, November, 28th, 2009.

On November 27, 2009, 12 hours prior to the commencement of the strike, the Company began to abolish regular assignment pools in Capreol, Ontario. The Union claims that the Company should have consulted or discussed with the Union before applying the provisions of Article 86.3 of Agreement 4.16. The Union sustains that the Company made no effort whatsoever to even speak to the Union in respect to local agreement. Articles 86.1, 86.2 of the Collective Agreement stipulates:

> "86.1 The parties to this Agreement agree that in the case a work stoppage by employees in the railway industry which would cause a major disruption in road or yard service assignments, every effort should be made to avoid disruptions.
>
> 86.2 To avoid such disruptions the local supervisory officer of the Company and the Local Chairperson of the Union will as soon as possible, enter unto such local agreements in writing as may be required."

Prior to the cancellation of the pool and assignment, the evidence shows that on November 26th, 2009 at 16h13, Superintendent Rick D. Baker sent an email to Mr. Allan McDavid from the Union and informed him of the following:

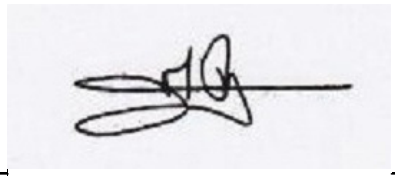
> "As per my voice mail on your cell at 15:10 today to contact me. Relating to the potential strike by the TCRC to take effect at 00:01 Saturday November 28th, 2009. Short of any written suggestions to be reviewed, the Company will be invoking Article 86, more specifically Article 86.3 until the potential strike is over and Operations returns to normal. (…)"

The next day on November 27th, at 12:00EST, Mr. McDavid replied and mentioned that Mr. Baker should have called him at his home instead of his cellular and that he was not available as he was attending arbitration. In the evening of November 27th, at 20:29EST, Mrs. Nancy Drew, Local Chairperson sent a proposal to the Company. On the morning of November 28th, 2009, Mr. Baker sent the Union's proposal for review by the crew office. Finally, early in the morning of Sunday, November 29th, Mr. O'Neil on behalf of the Company informed Mrs. Drew that they were trying to draft a proposal by the end of the day to cover off some of the Union's concerns.

The sequence of those facts and exchanges amongst the parties between November 24th and November 29th, reveals that the Company did engaged in a discussion with the Union and was open to any suggestion and in fact considered the Union's proposal. But, while the Union's proposal was being reviewed by the Company, the latter acted as if there was no agreement and applied Article 86.3 of the Collective Agreement. Such actions were exercised just a few hours after the reception of the Union's proposal and a few hours before the beginning of the Locomotive Engineer's strike. Article 86.3 of Agreement 4.16 applies in the case where no local arrangements are entered into pursuant to paragraph 86.2 of the Collective Agreement.

Given the very short time frame in which both parties had to discuss and come to an agreement and the particular context that required prompt decisions and actions, I cannot conclude that the Company acted in a bad faith or avoided the application of Article 86.2 of the Agreement. The Company did engage in some discussion with the Union through email correspondence. Perhaps, the Company did apply Article 86.3 of the Collective Agreement while parties where exchanging on the Union's proposal but that evidence does not demonstrate that the Company acted in a bad faith nor that it did not attempt to respect the language or the spirit of Article 86 which provides that both parties will try to come into a local arrangement to avoid any disruptions. Furthermore, the evidence does not demonstrate that the end of the discussions among parties was disputed within the days following the last email of November 29th, 2009 nor that the Union requested in writing or otherwise any counter proposal or further discussion.

For all the foregoing reasons the grievance must be dismissed.



June 21, 2016

MAUREEN FLYNN
ARBITRATOR