

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4632**

Heard in Calgary, May 8, 2018

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**UNITED STEELWORKERS – LOCAL 2004**

**DISPUTE:**

Company failed to provide the Union a notice of start time change.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

The Company provided the Union with a notice that the members listed in the file start time would change Wednesday March 02 from 08:00 to 11:00 until further notice.

The Company on March 12, 2016 changed these members start time from 11:00 to 08:00 without providing the Union with a notice of this new start time change.

The Union became aware of this start time change on March 25, 2016 and submitted a grievance March 28, 2016.

The Union contends that the Company is in violation of Article 2 (hours of Service and Meals Period) 2.3, Article 8. (Overtime and Calls) 8.6 of Agreement 10.1.

The Union requested that all members listed be made whole at overtime rate for the hours worked (08:00 till 11:00) from March 12, 2016 until the Union became aware of the new start time change on March 25, 2016.

The Union and Company have discussed this matter at Joint Conference as per the Collective agreement without resolve.

**FOR THE UNION:**  
**(SGD.) M. Piché**  
Staff Representative

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
S. M <sup>c</sup> Cartney	– Senior Manager, Design and Construction, Winnipeg
S. Smith	– Manager Labour Relations, Edmonton

There appeared on behalf of the Union:

T. Lundblad	– Staff Representative, Toronto
G. Colli	– Chief Steward, Prairie Region, Winnipeg

## AWARD OF THE ARBITRATOR

Article 2.2 and 2.3 of Agreement 10.1 provide as follows:

2.2 Regular day shifts shall start at or between 05:00 hours and 10:00 hours.

2.3 Notwithstanding the provisions of Article 2.2, the starting time for employees not living in hotel, motel, boarding cars, or other mobile units may be established or changed to meet the requirements of the service. When the starting time is to be changed, as much advance notice as possible, but no less than 24 hours' notice, shall be given to the employees affected and, where practicable, the notice will be posted promptly in a place accessible to such employees. The appropriate Unit Chairperson and the USW President, Local 2004 or designated representative shall be advised of any change in starting time at the same time such notice is given to employees.

On March 1, 2016 the Company advised certain members of the Union that their regular day shifts' start time would change, on March 2, 2016, to the hours of 08:00 to 11:00 "*until further notice*" (Union Exhibit; Tab 2). Thereafter, on March 12, 2016 the Company changed those members' start times back to their regular shifts between 05:00 and 10:00.

The Union subsequently became aware of the start time change on March 25, 2016 and grieved the Company's failure to provide notice of the reversion to the Union's designated representative. It argues that this failure constitutes a breach of Article 2.3.

The Company argues that, while it is compelled to provide the notice of a change in regular start times pursuant to Article 2.3, there is no obligation to do the same when the employees are directed to revert back to their original regular day shifts.

In my view, the language of Article 2.3 is clear. It requires the Company to advise the appropriate Unit Chairperson or designated representative of **any change** in starting times at the same time such notice is given to the employees. There is no distinction between original notices of change and those that revert the start times back to the employees' regular shifts. Notice of the reversion to the original start time is a condition of the implementation of the start time change (**CROA 462** and **CROA 3739**). In this case the appropriate notice could have been accomplished by including it in the original notice of the start time change contained in Tab 2.

The Company's failure to advise the appropriate Union Representatives that the employees' start time was to revert back to their previous original scheduled hours represents a breach of Article 2.3. The appropriate remedy was addressed in the cases referred to above. In **CROA 462**, Arbitrator Weatherill notes:

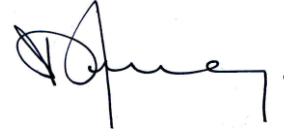
While there is no "penalty" set out for violation of Article 4.7, the natural consequence of non-compliance with its provisions must be that the purported changes are ineffective. That is, until the written notification provided for in the Collective Agreement was given, Mr. Luciani's regular relief schedule remain the same.

...

The giving of such notice is a condition of the implementation of such change, and it follows as the appropriate redress for this violation, that hours worked outside of the original scheduled hours would be overtime until the requirements of the Collective Agreement were met.

The grievance is allowed. The Company shall compensate the affected employees at the overtime rate for the hours worked outside of the scheduled 08:00 to 11:00 shifts until the requirements of the Collective Agreement were met.

I will retain jurisdiction with respect to the interpretation, application and implementation of this award.

A handwritten signature in black ink, appearing to read "R. Hornung", with a period at the end. The signature is written in a cursive style.

May 16, 2018

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RICHARD I. HORNUNG  
ARBITRATOR