

IN THE MATTER OF AN ARBITRATION

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

GRIEVANCE RE: MATERIAL CHANGE NOTICES

SOLE ARBITRATOR: Michel G. Picher

There appeared on behalf of the Company:

Wm. Hlibchuk	– Counsel, Montreal
J. Torchia	– Director, Labour Relations, Edmonton
K. Morris	– Sr. Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
J. Krawec	– Manager, Labour Relations (ret'd), Toronto

There appeared on behalf of the Union:

M. Church	– Counsel, Toronto
J. Robbins	– General Chairman, TCRC-CTY, Sarnia
P. Vickers	– General Chairman, TCRC(LE), Sarnia
B. Willows	– General Chairman, TCRC(LE), Edmonton
B. Boechler	– General Chairman, TCRC-CTY, Edmonton
R. Hackl	– Vice-General Chairman, TCRC-CTY, Edmonton
T. Markewich	– Vice-General Chairman, TCRC(LE), Edmonton
T. Thompson	– Vice-General Chairman, TCRC-CTY, Edmonton
W. Franko	– Vice-General Chairman, TCRC-CTY, Edmonton
R. Beatty	– Transition Director, TCRC-CTY, Sault Ste Marie
R. Lee	– Local Chairman, TCRC(LE), Vancouver

A hearing in this matter was held in Edmonton on Monday, 7 June 2010.

AWARD

This arbitration involves four grievances filed on behalf of four Union General Committees of Adjustment, each of them alleging a violation of their respective collective agreements. They maintain that the Company wrongfully utilized the material change provisions in their collective agreements to effectively compel employees to work outside the scope of their collective agreements and under the scope of another collective agreement in a manner contrary to the overall scheme of all four collective agreements. The Company maintains that it is entitled to give the material change notices which it did and that no violation of the collective agreements has occurred.

As noted above, four collective agreements are involved. Collective agreement 4.16 governs the terms and conditions of employment of Train and Yard Service Employees, including Conductors, on Eastern Lines. The geographic scope of the collective agreement involves all territory to the east of Armstrong, Ontario. Collective agreement 1.1 applies to locomotive engineers on the same territory. Collective agreement 4.3 applies to Train and Yard employees including Conductors, employed in Western Canada, which is to say west of Armstrong, Ontario. Over that same territory collective agreement 1.2 governs the terms and conditions of employment of locomotive engineers.

The nature of the dispute is outlined in the statement of dispute and joint statement of issue filed at the hearing. It reads as follows:

DISPUTE:

The applicability of the Material Change in Working Conditions Article as contained in collective agreements 1.1, 1.2, 4.3 and 4.16 (Articles 78.7, 89.7, 139.1(l) and 79.7 respectively).

STATEMENT OF ISSUE:

The Company on/about June 4, 2009, served two (2) Material Change Notices; one on collective agreements 4.3 and 1.2, and one on collective agreements 4.16 and 1.1, outlining the Company's intention to implement a change in train service between the terminals of Sioux Lookout and Hornepayne over the Allanwater and Caramat Subdivisions.

It is the Union's position that:

1. the Company is prohibited from utilizing the Material Change in Working Conditions article of the applicable collective agreements to change the Seniority Districts and Geographical Territories governed by the above noted collective agreements; and
2. the Material Change provisions contained in the four (4) separate and distinct collective agreements are limited solely to the Geographical Territory and Seniority Districts specifically identified in each of the respective collective agreements; and
3. the parties have previously agreed that the Material Change in working Conditions cannot be utilized outside of the geographical territory governed by the specific collective agreements.

In the alternative, and without prejudice to the foregoing, the Union argues that the Company is estopped from using the Material Change article to change the seniority boundaries without agreement between the parties.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) P. VICKERS
GENERAL CHAIRMAN

(SGD.) B. WILLOWS
GENERAL CHAIRMAN

(SGD.) B. R. BOECHLER
GENERAL CHAIRMAN

(SGD.) J. ROBBINS
GENERAL CHAIRMAN

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

The record discloses that on June 4, 2009 the Company gave written notice to General Chairman Paul Vickers, responsible for locomotive engineers on a portion of Eastern Lines and to Jim Robbins, General Chairman responsible for conductors and assistant conductors on the same portion of the Company's Eastern Lines, of a proposed material change in operations. The same letter of notice appears to have been re-issued to Mr. Vickers and Mr. Robbins on June 19, 2009. The following day, June 20, 2009 it was issued to Mr. Bruce Willows, General Chairman responsible for locomotive engineers on Western Lines, as well as to Mr. Bryan Boechler, General Chairman responsible for conductors and assistant conductors on Western Lines.

As noted above, Armstrong, Ontario is the geographic point of separation between the Company's lines in Eastern and Western Canada. As such, it delineates the geographic limit of the scope of the Eastern Lines and Western Lines collective agreements cited above. While no precise dates were provided, it does not appear disputed that the geographic distinction between east and west, and the related scope of the respective collective agreements governing Eastern and Western Lines has been in place for many decades. The unchallenged representation of the Union is that never in the history of the parties' collective bargaining have employees home terminalled on Eastern or Western Lines, on either side of the divide of Armstrong, Ontario, been assigned to work to the west or to the east of that line, respectively. In other words, until the circumstances giving rise to these four grievances, the jurisdictional line separating east and west has never been crossed for the purposes of any train crew assignments.

That changed with the notice provided to the four general chairmen of the General Committees of Adjustment for the respective regions, which prompted these grievances. In essence, the Company proposes to have western crews operate in an eastward direction beyond Sioux Lookout, through Armstrong and east to Hornepayne. Conversely, Hornepayne crews would operate, for the first time, beyond Armstrong, westward to Sioux Lookout. That is expressed as follows in the letters of notice provided to the respective general chairmen:

Current operations include the following:

Crews home stationed at Hornepayne operate extended run service (11 hours) between Hornepayne, Ontario and Armstrong, Ontario on the Caramat Subdivision (244 run miles).

Crews home stationed at Sioux Lookout operate in single subdivision service (10 hours) between Sioux Lookout, Ontario and Armstrong, Ontario on the Allanwater Subdivision (139 run miles).

Changes to be implemented involve:

Crews home stationed at Hornepayne operating between Hornepayne, Ontario and Sioux Lookout, Ontario on the Caramat and Allanwater Subdivisions (383 miles).

Crews home stationed at Sioux Lookout operating between Sioux Lookout and Hornepayne over the Allanwater and Caramat Subdivisions (383 miles).

The Company does not anticipate any adverse effects to employees at Hornepayne. However, as contemplated by the material change article 79.1c of Agreement 1.1 the Company is prepared to discuss (although not limited to) the following items:

- 1) Hours of Duty
- 2) Equalization of Miles
- 3) Work Distribution
- 4) Learning the Road

The Company is prepared to meet and discuss these changes as outlined in the collective agreement at your earliest convenience. ...

The Union position, argued on behalf of all four GCAs, is relatively straightforward. It submits that each of the four collective agreements is a discrete and complete jurisdictional document governing the terms and conditions of the employees who fall under it. The Company cannot, the Union argues, purport to reassign employees who are home terminalled and work in the territory governed by one collective agreement to perform work assignments into territory governed by a different collective agreement, absent the Union's agreement. Union counsel stresses that employees who fall under a given collective agreement hold seniority under that agreement, but hold no seniority under any other collective agreement.

The provisions of the four collective agreements here at issue are not materially different with respect to the establishment of seniority and seniority districts, the establishing of extended runs or the introduction by the Company of material changes in working conditions.

By way of example, article 79 of collective agreement 4.16, governing conductors and assistant conductors on Eastern Lines, reads, in part, as follows:

ARTICLE 79
Material Change in Working Conditions

79.1 Prior to the introduction of run-throughs, changes or closures of home stations (including those brought about by the sale of a line), or the introduction of new technology initiated solely by the Company and having a significantly adverse effect on employees, the Company will:

- (a) Give at least 180 days' advance notice to the Union of any such proposed change, with a full description thereof and details as to the anticipated changes in working conditions; and

- (b) Negotiate with the Union measures to minimize any significantly adverse effects of the proposed change on employees but such measures shall not include changes in rates of pay.
- (c) While not necessarily limited thereto, in the case of run-throughs and other changes described in this paragraph 79.1, the matters considered negotiable will include the following:
- (1) Appropriate timing
 - (2) Appropriate phasing
 - (3) Hours on duty
 - (4) Equalization of miles
 - (5) Work distribution
 - (6) Appropriate accommodation
 - (7) Bulletining
 - (8) Seniority arrangements
 - (9) Learning the road
 - (10) Use of attrition
 - (11) Deferred separation

NOTE: For the purpose of this Article 79, home station is defined as the terminal where the spare board is maintained and/or from which relief is supplied.

Article 22A of collective agreement 4.16 expressly establishes extended run terminals and reads, in part, as follows:

22A.1 Extended runs in through freight service will be established between the following home terminals in accordance with Addendum No. 101.

London – Belleville (certain trains)
Montreal – Toronto (certain trains)
Belleville – Hamilton
Halifax – Moncton
Moncton – Edmundston
Hornepayne – Armstrong
Sarnia – Oshawa
Battle Creek – London
London – Belleville
St. Antoine – Belleville
Montreal – Toronto (certain trains)
Belleville – Pt. Robinson
Buffalo – Sarnia
Detroit (Moterm) – Toronto (Intermodal)
Flint – Oshawa
Toronto – Capreol
Capreol – Hornepayne
Buffalo – Oshawa
Joffre – Mont Joli

Joffre - Campbellton

For the purposes of the document, Sarnia-Port Huron are the same, and Windsor-Detroit are the same, Buffalo-Niagara are the same and the established travel allowances are applicable at these locations.

Addendum No. 101, which is in the form of a letter of understanding dated May 5, 1995, establishes a set of principles governing extended runs for both conductors and assistant conductors as well as locomotive engineers. That document recognizes, on its face, that the extended run agreements are in relation to Eastern Canada. Its first two paragraphs read as follows:

Gentlemen:

During the negotiations at Toronto in May 1995 which culminated in an agreement on implementation of extended runs/CSIP in Eastern Canada, we agreed to a process for implementation and ongoing monitoring.

It was decided in order to protect employees that a set of principles would be used to guide implementation and ongoing operation of extended runs. These principles are as follows:

A similar statement of principles of extended runs is found under a letter of the same date, forming Addendum No. 65 of collective agreement 4.3 governing train and yard service employees on the Prairie and Mountain Regions and extends, in identical terms, to locomotive engineers on the same territory.

Counsel for the Union submits that all of these provisions reflect the agreement and understanding of many decades whereby the parties have recognized that the separate General Committees of Adjustment, for locomotive engineers East and West and for conductors and assistant conductors East and West, have always involved discrete collective agreements separate and distinct in geographic scope. He stresses

that each of them defines a self-contained employment "world" which does not overlap into the work jurisdiction of any of the others and into which none of the others can claim work or exercise jurisdiction. On that basis, a conductor or assistant conductor who works under collective agreement 4.3 in Western Canada cannot be assigned to work, in whole or in part, under collective agreement 4.16 in Eastern Canada, a territory upon which he or she holds no seniority. He submits that the same must hold true for locomotive engineers working under collective agreements 1.1 and 1.2 in Eastern and Western Canada respectively.

Counsel for the Union stresses that the Company has never before implemented extended runs by way of a notice of material change. He draws to the Arbitrator's attention the bargaining history between the parties whereby extended runs have always been negotiated with the Union as part of the collective agreement. That has generally been the case, he notes, because the Company was obliged to negotiate a relaxation of the seniority district provisions of collective agreements for the proper implementation of extended runs and the related change in the utilization of home terminals. He questions on what basis the Company can now effectively override the seniority provisions of the collective agreements governing the respective GCAs by the issuing of a notice of material change which overlaps the territory of two separate collective agreements. Counsel stresses that the very title of the collective agreement, as for example in collective agreement 4.16, states that it governs the "Rates of Pay and Working Conditions for Train and Yard Service Employees Eastern Lines Set Forth in Article 46 ...". He stresses that article 46 goes on to establish an extensive structure of separate seniority districts, numbered from 1 to 19, spanning the territory from Halifax

to Armstrong, and on a southern line to Thunder Bay. Counsel questions on what basis the Company can simply override or ignore these seniority provisions in the purported reassignment of employees outside their collective agreement territory pursuant to a notice of material change. While counsel concedes that in a proper material change circumstance the Company can seek the relaxation of various collective agreement provisions, such as seniority and hours of work, he submits that the concept of relaxation cannot extend to a change in the geographic scope of the collective agreement itself.

Counsel for the Union stresses that the Union does not rest its case on the sanctity of the seniority districts established within each of the four collective agreements. He implicitly acknowledges that there may be scope for the relaxation of seniority rights and assignments as between districts within the general territory covered by a collective agreement. However, he stresses that the ultimate seniority boundaries must be viewed as limited by the four corners of the collective agreement and that the material change provisions of the collective agreements do not contemplate any unilateral ability on the part of the Company to make assignments beyond those geographic limits.

The Union draws the Arbitrator's attention to circumstances in the past where the parties have in fact negotiated agreements permitting Western Lines employees to work on Eastern Lines. It cites a memorandum of agreement dated November 20, 2003 signed by the Chairmen for both collective agreement 4.16 GCA and collective agreement 4.3 GCA, along with the Company. That agreement allowed an exception,

whereby employees working under collective agreement 4.3 could perform work in the territory regulated by collective agreement 4.16, with respect to work between Current and Jellicoe on the Kinghorn Subdivision. That agreement provides, in part, as follows:

Whereas the Company acknowledges that all work between Current and Jellicoe belongs to and must be manned by employees covered by Agreement 4.16 working in the 20th seniority district and

Whereas the Company has requested that the Union enter into an Agreement under the provisions of Article 85 of Agreement 4.16 to allow the use of employees working under Agreement 4.3 so as to man work between Current and Jellicoe when there are no 20th seniority employees available at the terminal of Thunder Bay and,

Whereas the Union desires to cooperate with the Company in this matter, it is therefore agreed that the following shall apply:

1. When, on a trip by trip basis, a vacancy occurs on any assignment at the terminal of Thunder Bay the Company shall canvas all Thunder Bay East employees first prior to calling employees from the Thunder Bay West board as provided under the provisions of Appendix A.

NOTE: Appendix A is the Western Lines calling procedure

2. All permanent vacancies shall be advertised as outlined in Article 48 of Agreement 4.16.
3. At the change of time all assignments shall be advertised to the former 15th seniority district as described in Article 48 of Agreement 4.16.
4. If no bids are received by the Company, then the Company may advertise such positions to employees covered by Agreement 4.3 under the terms and conditions of Appendix A.

...

It is further understood and agreed that neither party shall invoke any or all dispositions of this Agreement as constituting a precedent or as constituting in any way admissions or concessions by the other party.

It also appears that not long thereafter, on April 25, 2005 the parties executed a second memorandum of agreement relating to the effective abandonment and closure of the Kinghorn Subdivision. That included an express acknowledgement that should

the line reopen assignments would be the subject of negotiations, with the understanding that "all work between Current and Longlac Jct., belongs to and must be manned, by employees covered by agreement 4.16, working on the 20th Seniority District and Locomotive Engineers covered by Agreement 1.1 for the Central Seniority District."

In an alternative submission, counsel for the Union submits that should the Union's interpretation of these collective agreements not be accepted, the doctrine of estoppel must nevertheless apply. Counsel argues that the Company has, for many decades, recognized the territorial jurisdiction which attaches to each of the collective agreements, never before assigning employees, whether by a material change notice or otherwise, to work across the geographic boundary which separates the Company's Eastern and Western lines. Counsel submits that the Union has effectively come to rely on what is in effect a long-standing representation by conduct and that it is not now equitably open to the Company to assert a contrary position, at least for the balance of the duration of the collective agreements.

Counsel for the Company makes a substantially different argument. He submits that the Company retains the ability to implement extended runs and that it is entitled to invoke the material change provisions of the collective agreements to do so. Counsel explains that the Company seeks to gain operational efficiencies by the utilization of longer trains, now made possible by technological changes in respect of a distribution of locomotive power and the construction of longer sidings, allowing greater operational efficiency. It is the Company's view that by the proper operation of the material change

provisions the introduction of an extended run between Sioux Lookout and Hornepayne, running through Armstrong, can be implemented with minimal, if any, adverse effects on the employees in the home terminals of Sioux Lookout and Hornepayne.

Counsel invokes the decisions of the Canadian Railway Office of Arbitration & Dispute Resolution confirming the important prerogative of management to schedule and assign work. In that regard, he makes reference to **CROA&DR 3595** where the arbitrator commented:

... There are few managerial prerogatives more important than the scheduling and assignment of work. A surrender of authority over such a key issue, however, should obviously be supported by clear and unequivocal language. ...

Reference is also made to **CROA 2718, 3196, 3327, 3504 and 3615**. The Company asserts that those cases stand for the proposition that any claim of exclusive work ownership must be supported by clear and unequivocal language. It submits that no language is to be found, for example in collective agreement 4.16, which would prohibit the Company from assigning employees working under collective agreement 4.3 from doing work within the geographic territory governed by collective agreement 4.16.

Counsel also cites **CROA 1572** in support of his argument that by these grievances the Union seeks to assert seniority rights in such a way as to effectively imply a right to work ownership where such jurisdictional language is not to be found in the collective agreement. He stresses that the reasoning in **CROA 1572** is to the effect that seniority provisions are to protect such factors as bumping rights, job posting opportunities, the order of layoff and priorities of recall. They are not, counsel submits,

to be the basis for asserting exclusive work jurisdiction, absent clear collective agreement language to that effect. Reference was also made to **CROA 3350** and **3480**, and **AH 142**.

Counsel also notes to the Arbitrator's attention that since 1998 there has been a single bargaining unit certificate for each running trades craft, which applies Canada wide, issued by the Canadian Industrial Relations Board. He further notes the decision of that same tribunal in **Canadian National**, 2010 CIRB 517 where it was held that the Maintenance of Way employees represented by the USW working in the Company's Northern Quebec division must fall under the same collective agreement as all other Maintenance of Way employees of the Company.

Finally, counsel submits that estoppel cannot apply in the case at hand. Arguing that no provision of the collective agreement expressly prohibits the assignment of work across the East-West dividing line and that there has been no representation by the Company that such an assignment might not be made, the principles of estoppel canvassed in **CROA 2650** simply do not apply. In counsel's submission the facts of the instant case more closely resemble those of **CROA 2024** where it was found that the Company was free to implement a direct deposit payroll system, and that it was not prevented from doing so simply because a different system had been used in the past. In support of the notion that parties to a collective agreement are not rigidly required to maintain past practices, reference is further made to **CROA 2638**. Counsel also directs the Arbitrator to the rejection of a jurisdictional claim made by the Union in **CROA 3406**.

I turn to consider the merits of the respective positions of the parties. In doing so, however, I consider it important to reflect briefly on the historical and structural realities of the railway industry as it has evolved in Canada, and in particular between the instant parties. Trade unions are, by their nature, frequently national or international organisms. The ability to conduct effective collective bargaining is generally assisted by the financial and human resources available to a larger organizational body. Conversely, however, it has long been recognized that the affairs of a union as they relate to the negotiation and administration of a collective agreement in a particular locality are best served by delegation of the union's authority to a subdivision of the union, frequently referred to as a "local". It is on that basis that a local of a national or international union might hold bargaining rights and be the signatory to a collective agreement in respect of a particular plant of a company while the bargaining rights at a separate plant might be exercised by a different local of the same union.

The trade unions which have traditionally represented running trades employees in the Canadian railway industry do not generally operate through units referred to as "locals". Rather, as has particularly been the case within the running trades, collective agreements are negotiated and administered by units of national or international unions generally referred to as General Committees of Adjustment or GCAs. Historically, the operations of the instant Company in respect of running trades have involved separate units for the purposes of collective bargaining both by territory and by craft. Consequently, the craft of locomotive engineers has evolved to be represented by separate General Committees of Adjustment, for the Company's Eastern Lines and for the Company's Western Lines. Each of those GCAs holds its own separate agreement

for its respective territory and administers the terms of those agreements in a relatively independent fashion. The same is true for the craft of trainmen, conductors and yardmen. They likewise negotiate and administer separate collective agreements, also on the basis of the territorial scope of Eastern and Western Lines, through their respective GCAs.

In recent years there have been changes in the designation of the collective bargaining agent. In the result, a single international trade union now holds the certificates as bargaining agent for all of the running trades employees of the Company. It also appears that under that framework the bargaining for the running trades occurs at a single table, albeit separate collective agreements emerge from that process. In the result, the concept of the GCA has been preserved. With respect to locomotive engineers the GCA for Western Lines is involved in the negotiation and the exclusive administration of collective agreement 1.2, the GCA for Eastern Lines is involved in the negotiation and exclusive administration of collective agreement 1.1. With respect to the conductors' trade the GCA for Eastern Canada exercises the same authority for collective agreement 4.16 while the GCA for Western Lines does the same in respect of collective agreement 4.3.

There is, it must be stressed, a resulting collective bargaining structure which, although it has been subject to changes in the identity and structure of bargaining agents over the years, has preserved an extremely long-standing institutional framework for the bargaining of collective agreements and the administration of those agreements during their term, based on geographic and craft divisions. While the

collective agreements east and west may be similar, they do have some distinct and different provisions.

The collective agreements here at issue do not contain scope clauses of the kind commonly seen in contemporary industrial or white collar institutional collective agreements. That is so, in substantial part, because the existence of these collective agreements and the bargaining relationship which underpins them dates from well before the advent of labour relations boards and what have now become well recognized certification processes for the establishing of bargaining units. In fact, the parties to these grievances are heirs to what may be among the longest standing collective bargaining relationships in Canada, a nation whose very origins are intrinsically linked to the railways. It is in that historic context that the instant collective agreements must be understood and interpreted.

The Arbitrator must confess to some difficulty with the argument advanced by the Company. Its counsel quite correctly points out that there is no article within any of the four collective agreements which expressly states that work within the geographic area described within the collective agreement can be said to be jurisdictionally exclusive to the employees under that collective agreement.

With respect, that argument fails entirely to appreciate the history and evolution of the collective agreements here at issue. The Company in the instant case came into existence in the early decades of the 20th century, initially as a Crown Corporation, through the government's acquisition of a number of large and small railways. That

process, even after the more recent privatization of the Company, has continued to ebb and flow to this day. It is therefore not surprising to see that the collective agreements do not contain a traditional scope clause, but rather make reference to terminals, seniority districts and subdivisions as a means of defining the scope of their operation.

I consider it significant that the Union's assertion that as long as there has been a division between Eastern Lines and Western Lines for the purposes of the four collective agreements here under consideration, employees who work under one or other of the collective agreements have never been assigned outside the territory to which that agreement applies. The lone exception is the Current and Jellicoe (Kinghorn) arrangement, made by express agreement. There have been many circumstances in which material change has involved assignments which overlap the seniority districts within each of the collective agreements. Those circumstances have been dealt with, whether by negotiation between the parties or by arbitrated resolution, under the express terms of the material change provisions of the collective agreements at least since the introduction of extended runs. It is in that context and within that framework that the material change provisions, for example article 79 of collective agreement 4.16, have involved the negotiation or arbitration of adjustments in seniority arrangements and work distribution as between employees at various home terminals.

However the Company is unable to point to any specific instance in which a material change has involved the assignment of employees who work on Western Lines to perform work on Eastern Lines, or vice versa. Indeed, as stressed by one of the Union's officers, when train crews operating either eastward or westward towards

Armstrong have exhausted their lawful hours of operation before reaching that destination, they are without exception rescued by employees from the same territory, and never by employees from the other territory who might find themselves available at the terminal of Armstrong. That, in the Arbitrator's view, is simply consistent with an extremely long-standing understanding between the parties that work on either side of the continental divide of Armstrong is to be performed exclusively by employees who work under the collective agreement negotiated and administered by the GCA for that territory. For reasons which it best appreciates, that is an arrangement by which the Company has lived and operated for decades. Most importantly, that is the limit within which it has exercised the implementation of run-throughs, extended runs and other material changes in working conditions through provisions such as article 79 of collective agreement 4.16, and parallel provisions within the three other collective agreements here under consideration.

On what basis can it now be concluded that the Company's prerogative to implement material changes is unconstrained by the territorial limitations of the four collective agreements? For the reasons touched upon above, the history and evolution of these collective agreements has effectively been based on an understanding that work within the Eastern and Western Lines, as defined within the collective agreements, is to be performed exclusively by employees who work under those agreements. I find it difficult to reject the suggestion of counsel for the Union who argues that the Company cannot use the ability to implement material change in working conditions to effectively disregard the long-standing geographic bounds of the operation of these collective agreements.

To be clear, in the Arbitrator's view the collective agreements do, by their express and implied terms, affirm that work within the geographic areas described within them is to be performed exclusively by employees who hold seniority under those collective agreements. That, in my view, is a conclusion which must be drawn by necessary implication from the very scheme and framework of the four collective agreements. If it were otherwise, and the submission of the Company is correct that there can be no claim of exclusive work ownership in these geographic areas, what would prevent the Company from hiring an entirely separate cadre of employees to perform work in the same territories, in disregard of the terms of the collective agreements? What would prevent the Company from assigning employees from Eastern Lines, to perform various kinds of work on Western Lines, as needs dictate, over a territory in which they hold no seniority? To simply ask these very fundamental questions is to answer them. To allow the position of the Company and dismiss these four grievances would be to disregard the most fundamental jurisdictional underpinnings of the collective agreements and, in my view, the well entrenched understanding of the parties over many years.

Nor should the foregoing analysis be viewed as visiting undue hardship upon the Company. It obviously remains open to the employer to negotiate with the Union an arrangement for trans-territorial work assignments to facilitate the material change which it would like to see. Given the precedent of the trans-territorial arrangement negotiated in respect of the Kinghorn Subdivision in 2003, the possibility of such an agreement is more than merely theoretical. However, the Company cannot ignore or

avoid the fact that it has, through the negotiation and administration of the four collective agreements over many decades, recognized that the four respective General Committees of Adjustment do hold the exclusive right to have their members perform the work which falls under their collective agreements in their respective territories.

What of the suggestion made in the Company's argument, as reflected in the decision of the Canadian Industrial Relations Board cited above, that multiple collective agreements within a single bargaining unit are not appropriate? The Arbitrator obviously does not exercise the discretion or jurisdiction of the CIRB with respect to commenting upon or ordering changes in the fundamental structures which the parties have long fashioned for collective bargaining. It is obviously within the rights of the employer to seek an order from the CIRB which might effectively result in a single collective agreement governing both running trades crafts on a national basis. However, as an arbitrator I must take these collective agreements as I find them. For the reasons discussed above, they each reflect an understanding of the parties, over many years of practice, that work jurisdiction in respect of Eastern and Western Lines, just as the terms of conditions of employment for those respective territories, are separate and exclusive to the GCAs responsible for each of the four collective agreements here in issue. Given the language and framework of the four collective agreements, the history of material change provisions as they have evolved and the extensive history of the collective bargaining framework within the industry and within the Company, it would require clear and unequivocal language within the collective agreements to persuade the Arbitrator that it is open to the Company, by the exercise of material change prerogatives, to effectively assign work under one collective agreement to employees

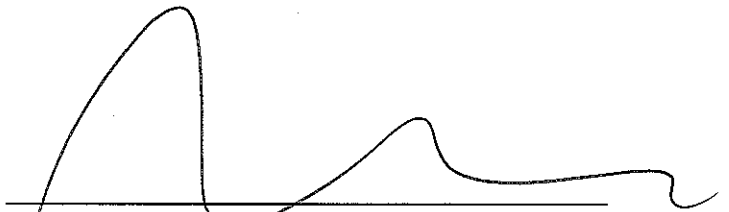
who work under another. No such practice has ever been followed or claimed and no such language has been cited to me in the instant case.

If I am incorrect in my interpretation of these collective agreements and the limitations on the Company's prerogative with respect to implementing a material change with trans-territorial consequences, I would also be inclined to accept the Union's submission with respect to the application of the doctrine of estoppel. There is no suggestion on the record before me that the Company has ever asserted that it can assign work across the territorial divide of these collective agreements. While I recognize that it was on a without prejudice basis, it obviously considered it appropriate to specifically negotiate a trans-territorial work assignment in the circumstances of the Kinghorn Subdivision Agreement in 2003. More significantly, notwithstanding that it has implemented many changes system wide for decades, the Company has never previously asserted that it can assign employees from Eastern Lines to work on Western Lines or vice versa. At a minimum, its actions and practice over many years must, I think, be taken as a representation by conduct that even if the material change provisions of the collective agreements can be properly interpreted as allowing trans-territorial assignment, it has effectively represented to the Union that it would not make any such assignment, whether in the implementation of extended runs or otherwise. That is particularly affirmed by the manner in which it implemented the exceptional adjustment with respect to the Kinghorn Subdivision Agreement.

For all of the foregoing reasons the Arbitrator finds and declares that the material change provisions of the four collective agreements do not extend to permitting the

Company to assign employees who hold seniority and work under one territorial collective agreement to perform work over lines which fall under another territorial collective agreement. Any such arrangement must be the subject of negotiation and agreement with the Union. Alternatively, should the Arbitrator's analysis be incorrect, the Company is estopped from implementing any such change until such time as the parties return to the bargaining table for the renewal of the collective agreements.

Dated at Ottawa this 18th day of June 2010



MICHEL G. PICHER
ARBITRATOR