

# **IN THE MATTER OF AN ARBITRATION**

BETWEEN

**CANADIAN NATIONAL RAILWAY COMPANY**  
(the "Company")

AND

**TEAMSTERS CANADA RAIL CONFERENCE**  
(the "Union")

**RE: EXTENDED RUN PRINCIPLES OF OPERATION**

SOLE ARBITRATOR: Michel G. Picher

Appearing For The Union:

R. A. Beatty	– Transition Director, Sault Ste. Marie
H. Caley	– Counsel, Toronto
P. Vickers	– General Chairman, LE, Sarnia
J. Robbins	– General Chairman, CTY, Sarnia
G. Gower	– Vice-General Chairman, CTY, Belleville
A. McDavid	– Local Chairman, CTY, Capreol
N. Drew	– Local Chairwoman, CTY, Belleville
C. Little	– Local Chairwoman, CTY, Belleville
E. Page	– Local Chairman, CTY, Toronto
P. Boucher	– Local Chairman, LE, Belleville

Appearing For The Company:

Wm. Hlibchuk	– Counsel, Montreal
D. VanCauwenberg	– Director, Labour Relations, Toronto
B. Hogan	– Manager, Labour Relations, Toronto
D. S. Fisher	– Director, Labour Relations, Montreal
A. Daigle	– Manager, Labour Relations, Montreal

Hearings in this matter were held in Montreal on July 5 and July 11, 2010 and September 8, 2010.

## A W A R D

The following statements of issue were filed at the hearing on September 8, 2010:

### **DISPUTE – UNION:**

The Union alleges the Company is in violation of:

Collective Agreement 4.16, articles 27, 48, 79, 92, Addendum 101, Workplace Environment Provision and the Extended Run Principles of Operation.

Collective Agreement 1.1, articles 78, Addendum 74, Addendum 103 and the Extended Run Principles of Operation.

### **UNION'S STATEMENT OF ISSUE:**

The issues in dispute before the Arbitrator involve two separate collective agreements, 4.16 and 1.1, and the Extended Run Principles of Operation (an ancillary document to the collective agreement(s)).

It was agreed between the parties that, although submitted jointly for resolution, the disputes are distinct and separate from each of the respective collective agreements and the Extended Run Principles of Operation and the rulings of the arbitrator are to be determined to be such.

The Union alleges the Company:

1. Violated the Emergency Service provisions of the Extended Run Principles of Operation and, as a result, additionally violated various provisions of the collective agreement.
2. In violation of the Extended Run Principles of Operation, unilaterally abolished and implemented extended Run Operations as, as a result, additionally violated various provisions of the collective agreement.
3. In violation of the Extended Run Principles of Operation, unilaterally abolished and established Extended Run Crewing and, as a result, additionally violated various provisions of the collective agreement.

The Union, given such violations, further argues that appropriate remedies under article 85, Addendum 123 of agreement 4.16 and Addendum 95 of agreement 1.1 are warranted in these circumstances.

The Company disagrees that there have been any violations of the collective agreement(s) or the Extended Run Principles of Operation nor are any remedies warranted as alleged by the Union.

**DISPUTE – COMPANY:**

The Union alleges the Company is in violation of:

Collective Agreement 4.16, articles 27, 48, 79, 92, Addendum 101, Workplace Environment Provision and the Extended Run Principles of Operation.

Collective Agreement 1.1, articles 78, Addendum 74 and the Extended Run Principles of Operation.

**COMPANY’S STATEMENT OF ISSUE:**

The issues in dispute before the Arbitrator involve two separate collective agreements, 4.16 and 1.1, and the Extended Run Principles of Operation (an ancillary document to the collective agreement(s)).

The Union alleges the Company:

Violated the Emergency Service provisions of the Extended Run Principles of Operation and, as a result, additionally violated various provisions of the collective agreement.

In violation of the Extended Run Principles of Operation, unilaterally abolished and implemented Extended Run Operations and, as a result, additionally violated various provisions of the collective agreement.

In violation of the Extended Run Principles of Operation, unilaterally abolished and establishment Extended Run Crewing and, as a result, violated various provisions of the collective agreement.

The Union, given such violations, further argues that appropriate remedies under article 85, Addendum 123 of agreement and Addendum 95 of agreement 1.1 are warranted in these circumstances.

The Company disagrees that there has been any violations of the collective agreement(s) or the Extended Run Principles of Operation nor are any remedies warranted as alleged by the Union.

FOR THE UNION:  
(SGD) PAUL VICKERS  
GEN. CH.

FOR THE COMPANY:  
BARRY HOGAN  
CN LABOUR RELATIONS

(SGD) JIM ROBBINS  
GEN. CH.

The instant arbitration concerns three separate heads of grievance. The first relates to the application of the Extended Run Principles, which form part of the collective agreement, in the situation of an emergency service disruption which occurred on February 13, 2009 on the Allanwater Subdivision between Armstrong and Sioux Lookout. The second head of dispute concerns the abolishment and implementation of extended runs by the Company. The Union alleges that when the Company reinstated extended run service between Capreol and Hornepayne, Ontario, effective November 14, 2008 it was under an obligation to provide a notice to the Union under article 79 of the collective agreement which governs the implementation of material changes. A similar grievance concerns the abolishment of extended run assignments between Capreol and Hornepayne and a return to a single subdivision operation over that territory effective September 23, 2008. Yet another identical issue relates to the Company's implementation of extended run service between Toronto North and Capreol in June of 2009. The third and final dispute relates to the Union's allegation that the Company has violated article 27 and 92 at Hornepayne and Capreol on December 30, 2008 and abolished the east end pool turns in the terminal of Hornepayne and also abolished eight turns from Capreol pools without prior notice or consultation with the local chairperson. Additionally the Union asserts that the Company improperly established and advertised east end turns one through six at Hornepayne, again without consulting with the proper Union officer as required under articles 27 and 92 of the collective agreement.

## I

### **FIRST ISSUE IN DISPUTE – EMERGENCY SERVICE DISRUPTION**

The facts in relation to the emergency service disruption which occurred on February 13, 2009 are not in substantial dispute. The Company experienced a major derailment on the Allanwater Subdivision between Armstrong and Sioux Lookout at approximately 04:40 CST on that date. The derailment caused the shutdown of the lines between Capreol and Hornepayne and occasioned an ultimate cost of some \$4.6m to the Company. The line remained closed for service until approximately 00:01 on February 16, 2009.

Faced with the major service disruption, the Company proposed to place all assignments at Hornepayne and Capreol in “emergency” status. Essentially that would have suspended the established eight hour time blocks which governed the assignments of both locomotive engineers and conductors at both locations, in accordance with the Extended Run Principles of the collective agreement. Essentially the emergency status would have employees being called on an “as needed”, without any reference to the normal assignment time blocks, until such time as normal service could be restored. The Company maintains that it obtained the agreement of the Unions’ local chairperson at Hornepayne, Ms. Nancy Drew, and that it accordingly proceeded to establish an emergency list of employees at Hornepayne. The Arbitrator is not satisfied that the Company has established that there was in fact an agreement reached with Ms. Drew. As best, the evidence would indicate that the Company

representative who spoke with her essentially asserted what the Company intended to do, to which she simply reacted by acknowledging what it was the Company intended to do. I am satisfied that the communication which occurred fell well short of the kind of discussion contemplated in various provisions of the collective agreement and that in fact the Union did not accede to placing all assignments at Hornepayne and the related employees under “emergency” status.

It is common ground that the local chairperson at Capreol was adamant in not agreeing to placing employees at that location on emergency status. As a result, at Capreol, the Company simply abolished the assignments and placed all employees on a spareboard, pending the return to normal operations.

The Union maintains that the Company effectively violated the express provisions of the extended run principles of the collective agreement. On that basis it claims that the employees affected by the Company’s actions at both locations should be entitled to the payment of constructive miles by reason of their having been improperly deprived of work within their time blocks, in accordance with the guidelines. Among other things, the Company submits that it was fully entitled, under the provisions of article 54 of the collective agreement which governs reductions in staff, to either place the employees on emergency status, or as occurred in Capreol, abolish their assignments for lack of any significant work. Effectively, the Company submits that it could not be placed under an obligation to continue to pay constructive miles to employees at Hornepayne who worked within established time blocks in extended run

service when in fact no trains were running. The Union, on the other hand, argues that the Company did have options. It could, its representative submits, have continued operations from both locations rerouting trains over other adjacent territories, some of which involve CP lines, as a means of maintaining service. The Union's representative notes that the extended run guidelines do allow the Company to place assignments and employees on emergency status if a major disruption occurs on their own service territory. The same is not true, however, he stresses, when the disruption occurs on adjacent territory, as happened in the case at hand.

In approaching this issue the Arbitrator has some difficulty with the position argued by the Company. Firstly, it must be acknowledged that the parties, who are sophisticated in the ways of collective bargaining, have fashioned an extensive code, within the terms of their collective agreement, to govern extended run operations on the territory here in question. Over a period of several years they evolved a set of principles to govern extended runs, culminating in an agreement of June 7, 1998 which established the current Extended Run Principles.

Article 5 of the Principles specifically addresses "major service disruptions: (i.e. Train Wrecks – Snow Blockades – Washouts)". That article expressly addresses what is to occur in the event of major service disruptions on the assigned territory between Hornepayne and Capreol, with rerouting to Chapleau. The principles which then apply are articulated, in part, as follows:

- a) Extended Runs will be suspended, Chapleau will be considered as the away-from-home terminal for both Capreol and Hornepayne.

- b) Time blocks which operate on the Extended Run territory between Hornepayne and Capreol will be suspended.
- c) Regular assigned time pool crews will be placed on an "EMERGENCY BOARD" rotation to operate trains between the home terminal and Chapleau.
- d) Regular assigned time pool employees will be canvassed, in order of their relative standing (Block Turn), as to whether they wish to be placed on the "EMERGENCY BOARD" prior to the commencement of their particular time block.

Regular assigned time pool employees not available at the time of canvassing will be placed at the bottom of the "EMERGENCY BOARD" upon proper notification to the crew office.

Employees who desire to wait until the commencement of their time block will be placed at the bottom of the "EMERGENCY BOARD" at that time.

- e) If a major service disruption occurs during a particular time block, employees will be immediately placed on the "EMERGENCY BOARD". Employees will be notified prior to such placement.
- f) Earnings for the operation of the "EMERGENCY BOARD" are those actual earnings as provided for in the collective agreements with the following exceptions:
  - (i) If an employees on the "EMERGENCY BOARD" is not utilized subsequent to operations returning to normal, such employee will be entitled to constructive miles. Operations must have returned to normal during the employee's assigned time block resulting in the employee not being utilized. Normal operations occur within 12 hours subsequent to traffic operations being resumed on the assigned territory.
  - (ii) On the return to normal operations, those employees who book up to and including 14 hours rest on completion of their last tour of duty and, as a result, are unavailable for their regular assignment will be entitled to constructive miles.
- g) The maximum allowable held away time is not applicable at Chapleau.
- h) The 100 mile an hour, or portion thereof, penalty will not apply. The penalty mileage, as provided for in the collective agreements remains in effect.

As is evident from the foregoing, the Company is entirely at liberty to place employees on an emergency board, suspend time blocks on extended run territory,

when a major service disruption occurs on the employees' assigned territory. However different considerations apply when the disruption does not occur on the assigned territory, but on an adjacent territory. In that regard the guidelines provide as follows:

**On the Adjacent Territory:**

- a) Time blocks will remain in effect.
- b) The 100 mile an hour penalty, or portion thereof, remains in effect.
- c) Time blocks may be altered so as to capture the irregular flow of traffic.

Note: This alternation applied only to the movement of the time block and not to the hourly limit of the block. The Local Chairperson of the Union or his/her delegate must be consulted prior to any time block alteration.

- d) Employees must be notified at least 2 hours prior to the commencement of their assigned time block of such alteration. If not properly notified, employees will be entitled to constructive miles.
- e) Pools can only be changed once from their original starting time.
- f) On return to normal operation those employees who book up to and including 14 hours rest on the completion of their last tour of duty and, as a result, are unavailable for their regular assignment will be entitled to constructive miles.
- g) If a major disruption occurs west of the terminal of Hornepayne, but east of Longlac, thereby preventing the rerouting of traffic on the Kinghorn Subdivision, resulting in traffic being operated on CP lines (thunder Bay to Sudbury) the following will apply:
  - 1) The territory between Hornepayne and Capreol will operate under the same conditions as if the major service disruption occurred on the assigned territory with the exception that the 100 mile an hour, or portion thereof, penalty will apply.
- h) If the major service disruption occurs on the adjacent territory west of the terminal of Armstrong, the following will apply:
  - 1) The territory between Hornepayne and Armstrong will operate under the same conditions as if the major service disruption occurred on the assigned territory with the exception that the 100 mile an hour, or portion thereof, penalty will apply.
- i) These guidelines will apply unless otherwise locally agreed between the Union and the Company.

- j) In the event traffic is re-routed, in Extended Run service, Hornepayne to Thunder Bay, articles 29.5 and 29.9 of agreement 1.1 and articles 51.4 and 51.8 of agreement 4.16 will be modified to reflect 12 hours.  
(emphasis in original)

Section 2 of the Principles governing extended runs deals with a number of general concepts, and includes some questions and answers. Questions and answers 11 and 13 read as follows:

- Q.11 Are there any situations in which I will not be entitled to constructive miles in the event my assigned turn is not utilized, if so, what are they?
- A.11 Yes. Statutory Holidays, the Christmas / New Year season major disruptions or as otherwise referred to in the Extended Run Principles.
- ...
- Q.13 Can a turn be abolished between mileage checks?
- A.13 Yes, if traffic does not warrant the established turn.

On its face Q&A no. 11, reproduced above, would appear to suggest that major disruptions can result in the suspension of the payment of constructive miles for a missed turn. In the Arbitrator's view, however, the language of that question and answer must be read in a manner consistent with the express provisions of the Extended Run Principles. An examination of those principles reveals that time blocks and assignments can be suspended when there is a major disruption on an employee's assigned territory. The rules are categorical, however, that time blocks are to remain in effect when a major disruption occurs on adjacent territory. The Arbitrator has no discretion to disregard these provisions, representing as they do the bargain struck between the parties for reasons which they best appreciate. In the circumstances, therefore, I am compelled to accept the submission of the Union that the Company was not at liberty to

impose emergency status on the employees at either Hornepayne or Capreol in the face of what is agreed to be a major disruption by reason of a derailment on adjacent territory. As is evident from the Extended Run Principles, the Company was at liberty to alter the time blocks to a maximum of three hours in either direction, to adjust for the irregular flow of traffic. It obviously also had the ability to reroute traffic as contemplated within the rules. It could not, however, invoke the establishing of emergency boards, an option which is only available on the territory where the major disruption occurred. Nor, in my view, could it properly invoke the abolishment of assignments in road service under article 54.1 of the collective agreement. While that article obviously remains available to the Company to deal generally with situations of insufficient work, it is not available to trump the express provisions of the Extended Run Principles which the parties chose to negotiate in some extensive detail and to incorporate within the provisions of their collective agreement.

For the foregoing reasons the Arbitrator finds and declares that the Company did violate the Extended Run Principles of the collective agreement in its abolishment of time blocks and assignments at both Hornepayne and Capreol and the setting up of an emergency board at Hornepayne and a spareboard at Capreol in a manner not consistent with the express requirements of the Extended Run Principles governing time blocks when a major disruption occurs on adjacent territory. I remit the issue to the parties for discussion of the appropriate remedy and retain jurisdiction in the eventuality that the parties should fail to agree in that regard.

## II

### **ABOLISHING AND IMPLEMENTING EXTENDED RUNS**

Three example grievances are put forward with respect to this aspect of the dispute. The first concerns the Company's advice to local Union officers on November 7, 2008 that it was implementing extended run service between Capreol and Hornepayne effective November 14, 2008. The Union does not dispute the right of the Company to revert to extended run service on that territory, however it maintains that it can only do so by honouring the required material change notice requirements found in both collective agreements, for example article 79 of the 4.16 collective agreement. The second example arose on December 23, 2008 when the Company abolished extended run assignments between Capreol and Hornepayne and re-implemented short haul assignments. The Union makes the same claim with respect to the application of article 79 of collective agreement 4.16 and the equivalent provisions of collective agreement 1.1, governing locomotive engineers. The third example involves the Company's decision to implement extended runs between Toronto North and Capreol in June of 2009. The Union again claims the proper application of the material change notice requirements of both collective agreements.

The Company argues, among other things, that the collective agreements make no specific provision dealing with the setting up or abolishment of extended runs. It maintains that the setting up and abolishing of extended runs is a normal change inherent in the nature of the work done by bargaining unit employees, and therefore an

exception to the material change provisions of both collective agreements. The Company also submits that the Union has not shown any adverse effects to its members by reason of the change in assignments which gave rise to these grievances.

The Arbitrator considers it important to note that there are three separate grievances under this head of dispute. Two of the three involve the establishing of extended run assignments. The first relates to operations between Capreol and Hornepayne effective November 14, 2008 while the second involves the implementation of extended run service between Toronto North and Capreol in June of 2009. One of the three examples, on the other hand, involves the abolishment of extended run assignments and the return to single subdivision operations. That is what occurred between Hornepayne and Capreol on or about December 23, 2008.

Does the Company's decision to institute an extended run require it to give notice of a material change under article 79 of the CTY collective agreement and the equivalent provisions of collective agreement 1.1? Absent the specific language of Addendum No. 101 to the collective agreement, the Union's case would be compelling with respect to the establishing of an extended run. However, an examination of Addendum 101 reveals that the parties agreed as follows:

The parties agreed that employees will not be adversely affected by extended runs. However, in the unlikely event that there is an impact number of employees on the spareboard/furlough boards/laid off which can be attributed to the introduction of extended runs, the Regional Steering Committee will address the matter and determine what remedial action, including any benefits covered by the Material Change provisions of the Agreements. [sic]

It is also noteworthy that article 92 of the collective agreement expressly provides a specific dispute procedure to resolve disagreements in relation to the establishment and regulation of assignments. Issues in dispute under that article can be carried forward to the Canadian Railway Office of Arbitration & Dispute Resolution for final and binding resolution.

When these provisions are read together, the Arbitrator is compelled to conclude that as regards the establishing of extended runs the parties expressly addressed the issue of how adverse effects and material change protections would be addressed. For reasons they best appreciate, they apparently excluded such changes in assignment from the material change provisions of the collective agreements, referring the matter to the Regional Steering Committee to deal with such remedial action as might be appropriate. Obviously, should there be disagreement following that stage, the disputes procedure of article 92 is fully available.

What does the foregoing signify? In my view it reflects the parties' agreement that a material change notice is not to be given when the Company decides to implement an extended run, in obvious consideration of the elaborate consultation and procedures contained both within Addendum No. 101 and the Extended Run Principles which form part of the collective agreement. I must therefore find and declare that the Union's grievance cannot succeed as regards the two instances where the Company established extended runs, namely between Hornepayne and Capreol as well between Toronto North and Capreol.

What of the abolishment of extended runs, and the reversion to short haul or single subdivision service? That issue was expressly addressed in a prior arbitration award. In **Canadian National Railway Company v United Transportation Union**, an award dated October 11, 2005 (AH 565) Arbitrator J.F.W. Weatherill was called upon to rule upon the Union's grievance claiming that article 79 must apply to the abolishment of extended runs on the Kingston Subdivision. In his analysis Arbitrator Weatherill noted that Appendix 9, which is now Addendum No. 101, expressly provides for provisions similar to those under article 79 to apply when an extended run is instituted. No such provisions are to be found, however, with respect to the dismantling of an extended run and a return to single subdivision or short haul service.

Arbitrator Weatherill concluded that the Company was therefore under an obligation to give notice pursuant to article 79.2 of collective agreement 4.16. In that regard he reasoned, in part, as follows:

It is true, as the Company argues, that the proposed change is not a run-through, the closure of a home station or the introduction of new technology. It is, in a sense, the contrary: the abolition of an extended run and the maintenance of a home station. Certainly, when the extended run was introduced, negotiations were held (pursuant to Appendix 9) which were, indeed, the same sort of negotiations which would have been held had a material change notice been issued. It is clear to me that, were it not for the existence of Appendix 9, the intention to establish an extended run would call for the issuance of a material change notice, although the nature of adverse effects, if any, might vary from one situation to another.

When extended runs were introduced on the Kingston Subdivision there were adverse effects on employees, and negotiations were held which dealt with these effectively. I am in agreement with the Union that the reversal of this procedure will, I think necessarily, produce adverse effects unless the sorts of negotiations contemplated by article 79.2 are undertaken (these include "Appropriate timing; Appropriate phasing; Hours on duty; Equalization of miles; Work distribution" and

other matters). In my view, the circumstances of the present case are quite different from those of **CROA Case No. 2070**, to which I was referred and with which I respectfully agree. The reversion from the operation of extended runs (which followed negotiations which dealt with the sorts of matters referred to in article 79.2) is not something to be considered as simply part of “normal changes inherent in the nature of the work in which employees are engaged”. It is, I conclude, a material change of the sort contemplated by article 79, and an article 79 notice ought to be given.

While, as the Company pointed out, the Union does not, in the Joint Statement, make any distinction between article 79.1 and article 79.2, it did, in its argument, refer to article 79.2 as setting out “the very type of issues which may bring about adverse effects if the Company’s plans are permitted without a proper notice of material change, Article 27.3 agreement or an Article 92 adjudication”. While I do not deal with the latter two matters in this portion of my award, I think it is appropriate in the circumstances of this case at least, to conclude that they come within the ambit of “all other cases of material change in working conditions – which would have significantly adverse effects on employees”, that is to say, within the contemplation of article 79.2

For all of the foregoing reasons, it is my award, in respect of this first issue, that the Company, if proceeding in its intention to abolish extended runs on the Kingston Subdivision, must give notice to the Union pursuant to article 79.2 of Agreement 4.16.

It is trite to say that when the parties to a collective agreement have received an interpretation of their document by an arbitrator, which is final and binding upon them, they must be taken to have accepted that interpretation as part of their collective agreement, save to the extent that they may negotiate otherwise upon its renewal. There is no suggestion before me that the parties have negotiated any exception to the principles and conclusions which emerge from **AH 565**, an award of Arbitrator Weatherill which I consider to be correctly decided.

In essence, the parties are seized of a binding award which expressly states that the Company is required to give to the Union a notice under article 79.2 of the collective agreement governing the CTY and obviously the equivalent provisions of the collective

agreement which governs locomotive engineers, whenever it chooses to abolish an extended run. In that circumstance, as indicated by Arbitrator Weatherill, the issue of adverse effects need not be established *a priori*. Whether adverse effects are in fact demonstrated is a part of the process of discussion engendered by the providing of a material change notice when an extended run is abolished. In fact the true extent of adverse effects may not be known until such time as employees canvass their alternatives and exercise their seniority when the material change is in fact implemented.

In the result, the Arbitrator is satisfied that the example concerning the abolishing of the extended run assignments between Capreol and Hornepayne on December 23, 2008 did involve a violation of the collective agreement, to the extent that the Company did not provide a material change notice to either Union under the appropriate provisions of their collective agreements. As regards the establishing of extended run assignments, in the two other example grievances reviewed, in accordance with the Extended Run Principles and Addendum 101, the Company was not under an obligation to give a material change notice, albeit it was under an obligation to fully deal with any possible adverse effects within the framework of Addendum 101 and the Extended Run Principles. For these reasons the Unions' grievance is allowed in part, and the matter is referred to the parties for discussion of an appropriate remedy. Failing agreement the Arbitrator retains jurisdiction.

### III

#### ARTICLE 27 OF AGREEMENT 4.16

#### ABOLISHING AND IMPLEMENTING CREW ASSIGNMENTS

The Union alleges that the Company has improperly abolished and implemented crew assignments, and that it has failed in its obligation to establish and regulate assignments by way of arrangement made locally between the local chairperson of the Union and the appropriate officer of the Company, as articulated in article 27.3, which reads as follows:

- 27.3** In through freight service (including SPRINT train operations on the 17th Seniority District), assignments, pools, or sets of runs will be established and regulated as locally arranged between the Local Chairperson of the Union and the proper officer of the Company. Such local arrangements will be consistent with the provisions of paragraphs 27.3 to 27.13 inclusive.

The Union also refers to article 27.5 which provides:

- 27.5** Through freight assignments, pools or sets of runs will be established and regulated in a manner which will not limit or otherwise restrict the provisions of this Agreement but which, at the same time, will maximize the regularity with which employees are required to report for work at the home terminal.

The Union asserts that the Company, in three separate instances, unilaterally implemented changes in assignments without any consultation with the Union's local chairperson. The first example concerns the abolishment of crew assignments at the East End pool at Hornepayne on or about November 10, 2008. The second relates to the implementation of extended run service at Capreol for service between both Capreol and Toronto and Capreol and Hornepayne, as advised on November 7, 2008. The third

example involves the Company's unilateral abolishment, without prior consultation, of extended run assignments between Capreol and Hornepayne, and the implementation of short haul assignments between Capreol, Foleyet and Hornepayne, on or about December 23, 2008.

In essence, the argument of the Company is that while it is true that prior discussion with local chairpersons did not occur, the bulletining process which surrounded the changes which were implemented gave the Unions' representatives ample opportunity, if they chose to avail themselves of it, to object to the changes or suggest alternatives to the Company.

With respect, the Arbitrator cannot accept that argument. The meaning and application of article 27 of collective agreement 4.16, and by implication, the parallel provisions of Addendum 103 of collective agreement 1.1, were thoroughly canvassed by this Arbitrator in **CROA&DR 3595**, a grievance between the Company and the United Transportation Union, award dated December 18, 2006. The Union objected to the unilateral establishing of crew assignments by the Company at Capreol in October of 2006. Among other things it argued that the Company could not change assignments until such time as the parties returned to the bargaining table given that the assignments were established under the Conductor Only provisions of the collective agreement. The Arbitrator rejected the position of the Union with respect to the rigidity of article 27, finding that it was indeed open to the Company to implement changes,

provided that it made a good faith attempt to first obtain the Union's agreement. The award reasons, in part, as follows:

In approaching this dispute the Arbitrator has fundamental difficulty with the interpretation of the Union as regards the meaning and scope of the establishment of assignments under article 27 of the collective agreement. If the Union's position is correct, that article contemplates a once and for all agreement on assignments in or about 1991, never to be altered ...

It is, of course, open to a company to effectively give to a union what might arguably be the most important decision making power with respect to the administration of its operations.... 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. No such language is drawn to the Arbitrator's attention in the case at hand. ...

Nor, in the Arbitrator's view, does the language of article 27 expressly or implicitly prevent the Company from implementing a change in assignments until such time as the provisions of articles 27 and 92 are exhausted. In my view the language of these provisions is to be contrasted with those provisions governing the implementation material changes in operations, forestalling implementation until such time as the material change provisions and procedure of the collective agreement, including arbitration, have been exhausted. Again, any such radical limitation on the Company's normal and most critical prerogatives must be evidenced in clear and unequivocal language, language which is not to be found in the articles here under consideration.

In the result, the Arbitrator is satisfied that article 27 of the collective agreement does not prevent the Company from implementing a change in assignments, although **it must first make a good faith attempt to obtain the agreement of the Union** with respect to what it proposes. I am satisfied that that was done in the case at hand. Should the parties remain in disagreement, the appropriate venue for the matter is the process provided for under article 92.

(emphasis added)

What does the jurisprudence therefore indicate? In my view it is clear that the Company cannot be ultimately prevented from implementing such changes in assignment as may be appropriate. It must, however, first engage in good faith discussions with the Union with respect to what it proposes to do. The obligation of discussion obviously implies the willingness to listen to alternative suggestions which

the Union might make. With the greatest respect to the Company, that process is a far cry from what it argues is the intention of article 27 in the instant case. As its representatives would have it, it is simply sufficient for the Company to announce the unilateral change it is implementing, with the Union then having only the opportunity to object after the fact, and only then to make such suggestions as it might wish.

Article 27 of collective agreement 4.16 obviously harkens to a time past when relations between the parties were sufficiently cooperative that the Company felt comfortable in ceding to the Union the obligation to first discuss with it any changes in assignments, pools or sets of runs. Whatever the current climate of the parties' relationship may be, the language of article 27 of collective agreement 4.16 remains entirely unchanged. Simply put, it is a violation of the collective agreement for the Company to unilaterally implement changes without first engaging in consultation with the Union for the purpose of establishing local arrangements with the local chairperson of the Union as contemplated under article 27.3 of the collective agreement. It is simply no answer to say that the Union could object after the fact or grieve a change in assignment under the terms of the collective agreement. The premise of article 27 of collective agreement 4.16 is clear that assignments are to be established and regulated by local arrangement. That necessarily anticipates meaningful disclosure and discussion with the Union's local representative when the Company proposes to make changes, and clearly before such changes are in fact implemented.

In all of the cases placed before the Arbitrator, no such consultation or attempt at reaching an arrangement was made prior to the announcement of the Company's decision. That is plainly contrary to the requirements of article 27 of collective agreement 4.16.

The Arbitrator therefore finds and declares that that the Company did violate article 27 of collective agreement 4.16 in the examples cited by the Union. It may be noted that the Union's representative indicated that it does not seek to undo the changes in assignments that were implemented. The Arbitrator therefore remits the matter to the parties for any discussion of remedy beyond the declaration made herein, and retains jurisdiction in the event of the parties' inability to reach agreement in that regard. It may also be noted that the Union has placed in issue the remedy provisions of the collective agreements, although its representative expressly states that it does not seek costs or punitive damages as against the Company. Whether the Company's actions can be characterized as involving blatant or conscious violations of the collective agreement is a matter upon which I make no comment at this time. As indicated above, I retain full remedial jurisdiction.

Dated at Ottawa this 21st day of September, 2010.

---

MICHEL G. PICHER  
ARBITRATOR