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IN THE MATTER OF AN ARBITRATION

BETWEEN: CANADIAN NATIONAL RAILWAY COMPANY

AND UNITED TRANSPORTATION UNION

AND IN THE MATTER OF TWO DISPUTES RELATING TO THE APPLICABILITY OF ARTICLE 79 WITH RESPECT TO THE COMPANY'S PROPOSED ABOLITION OF EXTENDED RUNS ON THE KINGSTON SUBDIVISION AND TO THE APPLICABILITY OF ARTICLE 27 ON THE KINGSTON SUBDIVISION

SOLE ARBITRATOR: J.F.W. Weatherill

A hearing in these matters was held at Toronto on September 30, 2005.

M Church, R.A. Beatty and others for the union.

J.P. Krawek and B.J. Hogan for the company.

AWARD

This matter concerns the proposed abolishment of extended runs on the Kingston Subdivision. The parties have agreed that it should proceed as an *ad hoc* arbitration, subject to the provisions of article 92 of Collective Agreement 4.16.

The Joint Statement of Issue sets out two issues for determination, and is as follows:

First Issue in Dispute - Application of Article 79

In accordance with an agreement reached in May of 1995 the parties agreed, among other things, to establish Extended Runs on the Kingston Subdivision between Montreal and Toronto to be operated by Montreal based crews.

On August 16, 2005, the Company informed the Union that it plans to revert to a single subdivision operation on the Kingston Subdivision.

Further, it is the Company's position that such change does not constitute a Material Change that would trigger the notice period or benefits contained in Article 79 - the Material Change provisions of the Collective Agreement.

The Union disagrees with the Company. It is the Union's position such contemplated Company changes are in effect "material changes" and as such are governed by the provisions of Article 79 of Collective Agreement 4.16.

Second Issue in Dispute - Application of Article 27

Article 27 - Crew Runs, governs the establishment and operation of assignments in through freight service.

Article 27.3 provides that such 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.

It is the Union's position that should the Company revert to single subdivision operations on the Kingston Subdivision that assignments and principles (on such territory), as presently established, be maintained with the necessary modifications, so as to be compatible with single subdivision operations. The Union submits that this position is consistent with the current provisions of the Collective Agreement.

The company submits that Extended Run Principles, currently in effect in this corridor, would no longer be in effect as a result of reverting to single subdivision operations.

Further, the Company submits that the current provisions of the Collective Agreement would apply as it relates to single subdivision operations and that there is no provision in the current Collective Agreement that would require the Company to modify these extended run principles for a single subdivision operation.

Article 92 of the 4.16 Collective Agreement provides the dispute procedure for the resolution of this matter.

AWARD RESPECTING THE FIRST ISSUE

Article 79 of Collective Agreement 4.16 deals with "Material Changes in Working Conditions". The article is a substantial one, with detailed provisions relating to the negotiations which may take place when a material change is instituted by the company. The issue in this case is whether or not the company's proposed reversion to a single subdivision operation on the Kingston Subdivision would constitute a material change, in which case the required notice would have to be given, and negotiations undertaken.

For the purposes of this award, the material provisions of article 79 are the following:

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.*

79.2 *In all other cases of material changes in working conditions which are to be initiated solely by the Company and which would have significantly adverse effects on employees, the Company will:*

(a) *Give at least 120 days' advance notice to the union - - - .*

79.6 *The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 79 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which employees are engaged.*

The Kingston Subdivision is the trackage between Montreal and Toronto. Work is performed out of the home terminals of Montreal and Belleville. Until June 1998, service was performed on a "single subdivision" basis. In negotiations in 1995, however, the parties had agreed, in a memorandum dealing with wages and many other matters, to add a new article to the collective agreement and providing for "extended runs". The material provision is as follows:

Extended runs in through freight service will be established between the following home terminals in accordance with Appendix 9:

Monsreal - Toronto (certain trains)

Appendix 9 sets out provisions for dealing with effects on employees when an extended run is instituted. It includes provisions similar to those in article 79. Appendix 9 also sets out the "Principles of Extended Runs" and sets out a committee structure for implementation and ongoing monitoring of extended runs. When, subsequently, extended runs were instituted on the Kingston Subdivision, this meant that certain trains, and train crews, operated between Montreal and Toronto with no change of crew at Belleville. When the extended runs were instituted, negotiations were held to deal with the significant effects such a change obviously had both for Montreal and Belleville employees. In particular the balance of single subdivision work which had been arranged as between Montreal and Belleville some years before at the time of the Brockville run-through agreement was adjusted to make up for the loss of work which would affect Belleville employees, since they did not operate extended runs. Although Belleville itself is not an "extended run terminal", the parties agreed that the extended run principles would apply there.

Now that the company has indicated its intention to revert from extended runs (although only certain trains were so operated) on the Kingston Subdivision, the union asserts that a material change notice should be issued.

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

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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.

* * *

AWARD RESPECTING THE SECOND ISSUE

Article 27 of collective agreement 4.16 deals generally with crew runs. Article 27.3 deals with the establishment and operation of assignments in through freight service. The issues in this case relate to through freight service. Article 27.3 is as follows:

27.3 In through freight service -- 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.

Among the provisions with which any such arrangements must be consistent is article 27.5, which is as follows:

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 to work at the home terminal.

The union's position appears to be, essentially, that if the company reverts (as it has the right to do) to single subdivision operations on the Kingston Subdivision and abolishes extended runs thereon, the extended runs principles should continue to apply as modified locally for operations on the subdivision, that is, for the Belleville and Montreal terminals and crews. The company's position, as set out in the Joint Statement, is simply that if it

reverts to single subdivision operations on the subdivision in question, the extended run principles will no longer be in effect on that subdivision.

In a strict sense, the company is quite correct: extended run principles were negotiated for extended run territories, and agreements respecting extended runs do not derogate from the general provisions of the collective agreement. Where there are no extended runs, the existing collective agreement provisions govern the establishment of assignments.

However that may be, this particular case involves the company's announced intention to abolish extended runs on the Kingston Subdivision. I have set out above my decision that such action requires notice pursuant to article 79.2. That article of course calls for negotiations. In any event, the new assignments which will be required if extended runs are abolished, will have to be established and regulated as locally arranged, as article 27.3 requires and furthermore, such assignments must be such as to maximize the regularity with which employees are required to report for work, as required by article 27.5. The negotiations, then, must be conducted in the light of article 27.5.

There appear to have been cases involving other subdivisions where the company, on reverting from extended runs to single subdivision operation, has agreed with the union to continue to apply extended runs principles. Those were instances of particular agreements in particular circumstances. I do not think that they constitute evidence which would (at least by itself) support an estoppel, nor do I consider that extended runs principles have somehow become entrenched in the collective agreement because of their successful application and even continuation in some circumstances.

Article 92 of the collective agreement sets out the disputes procedure to be followed in cases of disputes relating to the establishment and regulation of assignments and related matters. Article 92.5 sets out the nature of the arbitrator's jurisdiction as follows:

92.5 The decision of the arbitrator shall be limited to a determination as to the practicality of the parties' respective position on the issue(s) in dispute. The decision of the arbitrator shall, in no way, add to, subtract from, modify, rescind or disregard any provision of this Agreement.

The union has argued that since it has put forward a proposal (the continuation of extended run principles modified to be compatible with single subdivision operations) which, it alleges (supported by examples) is reasonable and practical; and since the company has put forward no proposal, I have no alternative but to accept the union's proposal as being the practical one, having regard to article 92.5. In my view, however, this argument is premature. The company recognizes that it is required to make local arrangements pursuant to article 27.3. Those arrangements have not yet been made, because the proposal to revert to single subdivision operations has not yet been implemented, the company apparently awaiting determination of the question whether or not it would be required to give notice under article 79. Accordingly, I think there cannot yet be said to be any dispute under article 92 relating to the establishment and regulation of assignments, although it would appear that such a dispute is contemplated in the second issue before me.

Given my determination that the company would be obliged to give notice under article 79 of its proposal to abolish extended runs on the Kingston Subdivision, it is my view that the appropriate award with respect to the second issue before me is a partial one: first, it is my conclusion that the company is incorrect in asserting that extended run principles would no longer be in effect - or at least, it is not necessarily the case that that would be so. It is, rather, a matter to be negotiated, having regard to articles 27.3 and 27.5, among others. Second, I cannot accept the union's contention that its "proposal" must be accepted: that would be, for the reasons stated above, a premature conclusion.

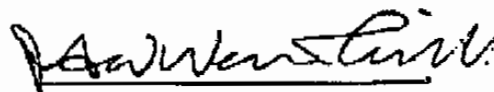
Accordingly, for all of the foregoing reasons, it is my award that if the company proceeds with the intended abolishment of extended runs on the Kingston Subdivision and

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gives proper notice thereof, and if, further it makes a proposal relating to assignments with which the union does not agree, I remain seised of the matter for the purpose of determining the practicality of the parties' respective positions on what may then be the issues in dispute relating to such assignments, so as to comply with article 92.5 and complete the award.

DATED AT OTTAWA, this 11th day of October, 2005.



Arbitrator