

IN THE MATTER OF AN ARBITRATION

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
TRAINMEN WEST AND LOCOMOTIVE ENGINEERS WEST**

**RE: REMOTE LOAD-OUT AT FIVE COALMINES
CRANBROOK / FORT STEELE TERMINAL**

SOLE ARBITRATOR: Michel G. Picher

There appeared on behalf of the Company:

A. Azim Garcia – Director, Labour Relations, Calgary
R. Hampel – Counsel, Calgary
D. Freeborn – Manager, Labour Relations, Calgary
S. Seeney – Director, Labour Relations, Calgary

There appeared on behalf of the Union:

K. Stuebing – Counsel, Toronto
D. Able – General Chairperson (Locomotive Engineers)
D. Olson – General Chairperson (Conductors Trainperson Yardmen)
D. Fulton – Sr. Vice-General Chairperson (CTY), Calgary
G. Edwards – Sr. Vice-General Chairperson, (LE), Calgary
B. Church – Local Chairperson (CTY), Cranbrook
K. Steward – Local Chairperson (LE)

A hearing in this matter was held in Montreal, QC on Friday, November 25, 2011

AWARD

This is an arbitration under the material change provisions of the two separate collective agreements which govern locomotive engineers and trainmen on the Company's Western Lines. Those provisions are found in article 72 of the collective agreement governing trainmen and article 34 of the collective agreement governing locomotive engineers.

The background to the dispute can be simply stated. On July 15, 2011 the Company provided notice of a material change to both General Committees of Adjustment with respect to the loading of coal trains at five mine sites near Sparwood, in British Columbia. At each of the five locations the loading of coal trains had been performed by train crews. Pursuant to the notice of change, the Company and the mine operators will be implementing a change whereby the trains, which load at slow speed, will be operated remotely by an employee of the mine utilizing a joy stick mechanism. The Union describes the technology as "the GE Tower Control Model". It is not disputed that the change to be implemented will ultimately occasion the abolishment of some thirty-four positions, apparently shared equally between locomotive engineers and conductors.

The background to the dispute is reflected in the Company's *ex parte* statement of issue which reads as follows:

DISPUTE:

The entitlement to benefits arising from the issuance of a notice for material change in working conditions involving the implementation of remote load-out technology at each of the five (5) mine sites which are currently serviced by Canadian Pacific Employees operating from Fort Steele, B.C. (home terminal).

COMPANY'S POSITION:

On July 15, 2011, the Company served a notice of Material Change upon the Union pursuant to Article 72 TCRC (Trainmen West) and Article 34 TCRC (Engineers West) regarding its intention to implement remote load-out technology at the five mine sites currently serviced by CP employees who have a home terminal of Fort Steele. The affected mines are:

- Coal Mountain – At approximate mileage 11.6, Byron Creek Subdivision
- Fording River – At approximate mileage 33.8, Fording River Subdivision
- Green Hills – At approximate mileage 21.1, Fording River Subdivision
- Line Creek – At approximate mileage 9.9, Fording River Subdivision
- Elkview – At approximate mileage 0.8, Fording River Subdivision

As a result of this change, it is anticipated that operating employees may experience a significant adverse effect.

On August 3rd, August 17th, September 7th and September 22, 2011, the parties met on a without prejudice basis to discuss the terms and conditions of this change. The Company proposed to negotiate an implementation agreement that would apply as the technology is implemented at each location. These discussions failed to produce a mutually satisfactory outcome. As a result, the parties were unable to reach a mutual agreement.

In line with the provisions of Article 72 of the TCRC – CTY Collective Agreement, a Board of Review was convened on October 7, 2011. The Board of Review reported out that same day with their finding and recommendations.

The parties met on October 13th and 14th in order to attempt a negotiated settlement, based on the findings of the Board of Review.

Unfortunately, the parties are unable to agree on the benefit provisions in their entirety.

Further, the Union takes the position that the Company has failed to disclose all relevant information as required by the Collective Agreements.

The Company disagrees and asserts that all relevant information has been produced and the standard Material Change provisions contained within the Collective agreement apply, with the addition of Lay-Off Benefits.

As appears from the foregoing there is some dispute as to whether the Company provided sufficient information to the Union for the purposes of the material change process contemplated under the collective agreements. Having reviewed the material before me, I am satisfied that there is no need to require the Company to produce any further information than has been provided to the Union. Of principal concern to the Union, of course, is the identification of positions which will be abolished. That has now been facilitated by the Company's undertaking to provide employment records for a period of one year, something which has been done. In my view the Union's concern with respect to gaining access to other documents, such as a pilot project report concerning the technological change being implemented, has no material bearing on the issues which concern us here. This award proceeds on the premise that thirty-four jobs will be lost and that the focus is on determining the appropriate measures to minimize the adverse effects on employees.

As agreed at the hearing, the Arbitrator will establish, in this award, general principles in answer to the issues identified by the Union as being in dispute. There may be other issues which are also unresolved, albeit that is not entirely clear. I shall therefore retain jurisdiction following this award to deal with any matters which may still need to be addressed.

2 YEARS CCS

The Union's first objection is taken to what it describes as the Company's requirement of two years cumulative compensated service (CCS) for any employee to

claim benefits under the Material Change Agreement or alternatively, under this award. The Union recognizes that that formulation does apply as a condition to claiming relocation benefits under article 34.11 of the collective agreement which governs locomotive engineers and article 72.14 of the collective agreement of the trainmen. It also submits, as an alternative position, that it can live with the two year CCS threshold if the Company should agree to according the benefits granted in some six material change agreements referred to as the RCLS material change agreements made since 1996, concerning the implementation of belt-pack switching in yards.

The Company has obviously not agreed to granting the unqualified benefits of the RCLS agreements. On balance, the Arbitrator is not inclined to support the position of the Union. The qualifier of two years of cumulative compensated service for access to the extraordinary protections of material change agreements, or arbitrated material change awards, is not uncommon within the industry. One example of such an agreement, albeit from the Eastern Lines, was tabled by the Company concerning what it calls the "Wellwood Agreement", negotiated in relation to the lease of trackage to the Huron Central Railway in or about July of 1997. Accordingly, the Arbitrator declines the request of the Union to not impose the requirement of two years of CCS for entitlement to benefits under this award.

MBR & BOOKING REST and MAXIMUM MILEAGE

The next issue relates to maintenance of basic rates (MBR) and the issue of booking rest without penalty.

The Company proposes language whereby employees will be penalized to the extent that they will be considered as having made themselves unavailable for service if they book in excess of ten hours' rest at their home terminal. The Union submits that the ten hour standard is taken from the RCLS Material Change agreements, noting that ten hours rest is the standard for yard service. Its counsel argues that that standard should not be applied in the instant case, as this dispute concerns employees in road service. I have some problem with that submission. Obviously, the locomotive engineers who were displaced by the RCLS material change would, in all likelihood, have been compelled to bid on locomotive engineer's work in road service. It is in that context that the ten hours' rest qualifier found in the RCLS material change agreements would apply. On what basis should any different standard apply to employees in road service in this case? I can see none. I am therefore compelled to reject the Union's request to eliminate the ten hours' rest qualification with respect to MBR wage protection.

The foregoing determination also relates to the resolution of the remaining issue concerning maximum mileage attained by employees. With respect to that issue I adopt the position of the Company.

PERFORMING EXTRA WORK

The Union next raises the issue of whether employees should be penalized with respect to their incumbency for performing extra work. In that regard it proposed the following language:

Employees who work extra trips while off for miles, Yard employees who work other than their own shift, and assigned employees who work on their rest days will have these earnings excluded and not computed as compensation paid to reduce their incumbency.

I do not consider the Union's position to be unreasonable. As a general rule, incumbencies are reduced to the extent that employees make themselves unavailable for work. I find it less than compelling that an incumbency should be reduced where, as in the example raised, an employee in fact performs extra trips beyond their maximum miles. The Union's request with respect to this issue is therefore granted.

EARLY SEPARATION ALLOWANCES

A key area of dispute is whether early separation allowances should be implemented in the context of this material change, as was done in the RCLS material change agreements. The Company takes the position that early separation allowances make no sense on the facts of this dispute. It submits that it has for some time been in an employment manpower shortage crisis at Cranbrook, being compelled to utilize management teams to operate some trains on a regular basis, as well as being required to engage in a substantial hiring campaign at that location. The Company's position is that there is no present nor likely future issue of a surplus of employees at the Fort Steele Terminal, and that it is therefore not appropriate to direct the payment of early separation allowances. Those allowance, it might be recalled, are intended to accelerate the retirement of senior employees, to favour the retention of junior employees, where a material change will in fact create a surplus situation.

In my view a formula can be devised to deal with this issue. Accepting as I do that it is not clear whether a surplus situation may arise at the Fort Steele terminal and also accepting that the extraordinary protections of early separation allowances should be tied to surplus situations and resulting layoffs, I deem it appropriate to make a conditional direction. I direct that the Company be required to make available seventeen early separation allowance opportunities. Those opportunities shall be available for a period not to exceed three years and shall be triggered only where a situation of surplus is clearly demonstrated. For the purposes of determining whether a surplus has occurred, the standards established by the parties in the Vancouver RCLS material change agreement of October 31, 1996 shall apply. By that standard, a surplus shall be established where an employee or employees are required to be laid off for nine out of twelve months. If that should occur, an early separation allowance shall be made available for each employee determined to be surplus, to a maximum of seventeen early separation allowance opportunities, to be offered on the basis of seniority.

SEVERANCES

The Union next addresses the issue of severances. In my view the same contingent approach should apply. It may be that no severances will result and severances need not be paid. If, however, in the three year period following this award severances should be shown to result from a surplus condition, I direct that severance payments be made available as found in the RCLS material change agreements. For

the purposes of severances, a surplus will be established in the same manner as described above, modeled on the Vancouver RCLS material change agreement.

IMPLEMENTATION, POOL & SPAREBOARD REGULATION,

PENSION CALCULATIONS, ETC.

The Union then raises a number of issues which the Company maintains are not appropriate for the Arbitrator to resolve, some of them in fact being covered by the collective agreements. Those issues include an implementation schedule, production of the report on the pilot project, protection of employees during implementation, pool regulation, layover, home time, maximum miles and the regulation of spareboards, and the assurance that bargaining unit work which may be performed on the mine sites be reserved to bargaining unit members. With one exception, I consider all of the issues raised by the Union to be sufficiently dealt with and protected under the terms of the collective agreements. The Union expresses a concern, in my view not unreasonable, that employees who find themselves within their last sixty months of pensionable employment may see their employment earning opportunities reduced during the initial implementation of the material change here under consideration. That would necessarily have a compounding effect on their income and their related pension income calculations. This aspect is therefore remitted to the parties for them to discuss, to determine a formula whereby employees in their last sixty months of employment are not unduly penalized by a reduction in work opportunities as a result of the implementation of this material change. Should the parties be unable to resolve an appropriate formula, the matter may be returned to me to be spoken to.

The Arbitrator remits the matter to the parties and retains jurisdiction for all purposes relating to the interpretation and implementation of this award.

Dated at Ottawa this 6th day of December, 2011

MICHEL G. PICHER
ARBITRATOR