IN THE MATTER OF AN ARBITRATION

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

PRELIMINARY OBJECTIONS RE:
COMPANY'S NOTICE OF MATERIAL CHANGE
AT FIVE TECK MINE SITES IN B.C.

SOLE ARBITRATOR: Michel G. Picher

There appeared on behalf of the Company:

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

There appeared on behalf of the Union:

M. A. Church – Counsel
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
H. Makoski – Vice-General Chairperson (LE), Winnipeg
B. Church – Local Chairperson (CTY), Cranbrook
K. Steward – Local Chairperson (LE)

A hearing in this matter was held in Calgary, AB on Monday, 7 November 2011

AWARD

This matter involves the application of the material change provisions governing both locomotive engineers and trainpersons who are under separate collective agreements, on the Company's western lines. It is common ground that the members of both bargaining units have operated trains between Fort Steele, near Cranbrook, and some five coal mine sites in the area of Sparwood, British Columbia. Additionally, at each of the five mine sites bargaining unit employees under both collective agreements have been involved in handling the loading of the trains within the mine sites and their preparation for departure back to Fort Steele.

By letter dated July 15, 2011 the General Chairs of both General Committees of Adjustment were advised that the Company intended to eliminate the loading work previously performed by the employees with the implementation of a new remote automated load out technology at each of the five mine sites. In accordance with that notice, the continuous loading operation at slow speed will henceforth be controlled by a remote joy stick technology, to be operated by an employee of each of the mines, respectively, thereby eliminating the loading work previously performed by the running crew employees represented by both General Committees of Adjustment.

This hearing was initially convened to deal with the submissions of the parties with respect to the adverse effects upon employees, and the measures to be implemented to minimize those adverse effects. However, the Union has raised

preliminary objections which, by the agreement of the parties, became the sole subject of this initial hearing.

In essence the preliminary objections of the Union are twofold. Firstly, it maintains that what has occurred is effectively a violation of the collective agreement to the extent that the work in question has simply been taken away from the bargaining units in a manner inconsistent with the overall scheme of the collective agreement. Secondly, the Union takes the position that the hearing on the merits of any material change is premature, as it has not been provided with sufficient facts and data to enable it to prepare its submissions, assuming that the matter is to be properly dealt with under the material change provisions of the two collective agreements governing locomotive engineers and trainpersons, respectively.

At the hearing the Company addressed the issue of disclosure. It appears that the Union, by its own efforts, compiled data with respect to the total amount of “mine time”, logged by bargaining unit employees during the two month period of August 1 to September 30, 2011 as well as for the one month period of June 18 to July 18, 2011. That data is important to the Union as it provides a clear picture of the loading work which will be lost to the two bargaining units by the implementation of the material change proposed by the Company. Counsel for the Company acknowledged the importance of that data, and undertook to provide to the Union additional similar data so as to give to the Union full information with respect to the extent of the mine time

loading operations performed by bargaining unit employees over a full period of one year.

In the Arbitrator's view the Company's undertaking must be seen to sufficiently satisfy the production requirements of the Union. The essential question, for the purposes of dealing with the material change issue, is to know with some precision the volume of work which is being lost to the two bargaining units, as the basis of appreciating the adverse effects on the employees concerned, namely the number of jobs or assignments which will in effect be abolished. It is the loss of those jobs or assignments which constitutes the adverse effects to be addressed in these proceedings. I am therefore satisfied that the first objection of the Union has been appropriately resolved.

What of the second objection? As presented, the Union effectively submits that the material change being implemented amounts to a violation of the fundamental provisions of the collective agreement. I cannot agree. What this dispute involves is the loading of coal trains which occurs entirely, or virtually entirely, within the private premises of some five coal mines which are the clients of the Company. Those clients have opted to adopt a new automated system, to some extent analogous to belt pack operations, whereby the personnel of the mines will remotely control the slow-speed progress of the train during the loading process. The Arbitrator is addressed to no provision of the collective agreement which would prevent the Company from effectively allowing that technological innovation in the loading process.

In that regard I am satisfied that it makes little difference whether the change was made at the initiative of the Company or at the initiative of the customer. What matters for the purposes of this dispute is that it is clearly a technological change of the kind contemplated by the material change provisions of the collective agreements, not unlike technological changes which have been addressed on numerous occasions in similar circumstances in the past. While the elimination of jobs by the advent of new technology is not something which the Union can be expected to easily welcome, it is not something which is prohibited by any provision of the collective agreements to which I have been referred. The issue might be different if the manual handling of the Company's trains were simply handed over to persons other than bargaining unit employees, so that the very work which they performed was now being performed by others. In that case the Union might arguably have a basis to argue a violation of the collective agreements. There is no suggestion before me that any such thing has occurred, however.

In the result, having reviewed the materials presented, I am satisfied that the initiative being proposed by the Company does properly fall within the material change provisions of both collective agreements, and is properly to be addressed in these proceedings. In my view no *prima facie* case of a violation of the collective agreements is disclosed, and to that extent the second preliminary objection of the Union cannot be sustained.

Both objections are therefore declined. The Arbitrator directs that this matter be scheduled to be heard on its merits with respect to the appropriate measures to minimize the adverse effects of the material change being implemented at the five coal mine sites, to be heard at Montreal on November 25, 2011. The relief which the Union seeks, which was to direct the Company to withdraw the notices of material change, cannot be sustained. Obviously, should the Company fail in its undertaking to provide the data with respect to the volume of work affected, that matter may be spoken to.

Dated at Calgary this 10th day of November 2011

MICHEL G. PICHER
ARBITRATOR