CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3559

Heard in Montreal Thursday, 11 May 2006

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Whether the Company, prior to the issuance of the Pacific Region District 1 & 2 Bulletin, dated December 19, 2005, complied with Section 4.3 of the collective agreement.

JOINT STATEMENT OF ISSUE:

On December 19, 2005, the Company issued the Pacific Region District 1 and 2 Bulletin No. 05-12, with rest days which did not give preference to Friday, Saturday and Sunday or Saturday, Sunday and Monday.

The Union's position: **(1.)** The Company is in violation of section with section 4.3 of the collective agreement by failing to properly meet with the Union prior to the issuance of Pacific Region District 1 & 2 Bulletin No. 05-12, dated December 19, 2005. **(2.)** The Company has not demonstrated that the intended use of non-preferred rest days are necessary to meet operational requirements and that, otherwise, additional relief service or working employees on an assigned rest day would be required. As such, the implementation of the work schedules contained in Pacific Region District 1 & 2 bulletin No. 05-12 is a violation of section 5.1 of the collective agreement and article 4.1(b) of the Memorandum of Settlement signed on January 14, 2005.

The Union's requested remedy: **(1.)** a declaration that the Company failed to properly meet with the Union prior to the issuance of Pacific Region District 1 & 2 Bulletin No. 05-12, dated December 19, 2005 and therefore violated section 4.3 of the collective agreement; **(2.)** a declaration that the implementation of Pacific Region District 1 & 2 Bulletin No. 05-12 constitutes a violation of section 5.1 of the collective agreement and article 4.1(b) of the Memorandum of Settlement signed on January 14, 2005; **(3.)** an order that Pacific Region District 1 & 2 Bulletin No. 05-12 be rescinded and that a new bulletin be issued that provides either Friday, Saturday and Sunday or Saturday, Sunday and Monday rest days.

The Company's position: **(1.)** The Company has met the requisite burden of proof to demonstrate that the work schedules which contain non-preferred rest days, as advertised in

Pacific Region District 1 & 2 Bulletin No. 05-12, dated December 19. 2005, are necessary to meet operational requirements and that, otherwise, additional relief service or working employees on assigned rest days would be required. **(2.)** The Company did meet with the Union prior to the issuance of Pacific Region District 1 & 2 Bulletin No. 05-12, dated December 19, 2005, and as such, the Company is not in violation of section with section 4.3 of the collective agreement. **(3.)** The Company therefore denies the Union's requests and declines the grievance.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.)	**(SGD.) S. SEENEY**
FOR: PRESIDENT, TCRC/MWED	**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

S. Seeney	– Manager, Labour Relations, Calgary
B. Murphy	– General Manager, Product Design / Interline
J. McBoyle	– Vice-President, Marketing & Sales (Intermodal)
G. Pozzobon	– General Manager, Engineering Capital Planning
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel,
B. Holden	– Extra Gang Foreman
B. Weightman	– Extra Gang Foreman
J. Daniel	– Director Pacific Region

AWARD OF THE ARBITRATOR

The case at hand turns on the application of clause 8.17 of the collective agreement, which provides as follows:

> **Assignment of Rest Days**
> **8.17** The rest days shall be consecutive as far as is possible consistent with the establishment of regular relief assignments and the avoidance of working an employee on an assigned rest day. Preference shall be given to Saturday and Sunday and then to Sunday and Monday. In any dispute as to the necessity of departing from the patter of two consecutive rest days or for granting rest days other than Saturday and Sunday or Sunday and Monday, it shall be incumbent in the Railway to show that such departure is necessary to meet operational requirements and that otherwise additional relief service or working an employee on an assigned rest day would be involved.

The attention of the Arbitrator was also directed to a new provision in the collective agreement, found in clause 8, as follows:

> **8.1** The work week for all employees covered by this agreement, unless otherwise excepted herein, shall be forty hours consisting of five days of eight hours each, with two consecutive rest days in each seven, subject to the following modifications: the work weeks may be staggered in accordance with the Railway's operational requirements. This Clause shall not be construed to create a guarantee of any number of hours or days of work not provided elsewhere in this agreement.
>
> **(a)** Notwithstanding the above, a four day, 10 regular hour per day schedule may be established on seasonal work crews. In the application of Section 8.17 the preferred rest days will be Friday, Saturday and Sunday or Saturday, Sunday and Monday.

On or about February 20, 2006 the Company advised the Union of its intention to implement a work schedule departing from the foregoing provision, for certain work crews, to maximize track work blocks and train operating windows so as to avoid excessive congestion of traffic through the areas of Alberta and the British Columbia interior. In particular, the notice advised that for the period between August 28 and November 15, 2006, non-conforming rest days would be implemented for work crews on the Brooks Subdivision – Medicine Hat to Calgary (Thursday, Friday and Saturday), and on the Mountain Subdivision – Field to Revelstoke (Sunday, Monday and Tuesday) and on the Shuswap Subdivision – Revelstoke to Kamloops (Sunday, Monday and Tuesday).

The Union relies on the following passage from the award in **CROA 2464**, arguing that the Company has not demonstrated a unique or urgent circumstance which justifies a departure from the normal consecutive rest days:

> In the Arbitrator's view there is a common theme running through all of the prior decisions relating to the interpretation and application of the language of article 5.1. Arbitrators in this Office have found that the onus which the Company bears to justify a departure from the scheduling of rest days on either Saturday and Sunday or Sunday and Monday is discharged where a temporary and/or urgent circumstance necessitates such a departure, and where the Company would otherwise be compelled to incur the additional cost of relief or overtime assignments.

The Arbitrator agrees with the position of the Union, namely that the Company must demonstrate either a temporary or an urgent circumstance necessitating a departure.

Has that been done in the case at hand? The evidence of the Company, which is not substantially challenged, reflects a substantial increase in traffic through the Alberta and British Columbia corridor. The data tabled in evidence reveals that annual traffic volumes on the Alberta service area, which includes the Brooks Subdivision, have increased by 31.4% between 2001 and 2005. The BC interior service area, which would include the Mountain and Shuswap Subdivisions, has had an annual traffic volume increase of 14.4% in the same period. In both service areas the Company forecasts still further growth in traffic for 2006 at the rate of between 3% to 5%.

The Company's presentation to the Arbitrator discloses that the sheer volume of traffic has created serious operational constraints. The situating of work blocks on the basis of the standard rest days has forced traffic into what the Company characterizes as a "surge and purge" pattern whereby traffic becomes backed up over the weekdays and is finally released through the system more freely on the standard weekend rest days. More significantly, these constraints have caused significant delays in operations,

a factor of critical concern in a service whose customers demand on time delivery and who can, as has occurred in the recent past, revert to other carriers, including trucks, to handle their transportation needs. Significantly, in 2005 the Company experienced 6,900 hours per month of train delays in the corridor which is the subject of this grievance, which the Company attributes to the impacts associated with inherent subdivision constraints and delays occasioned by the completion of work programs using the standard 4/3 work cycles. This, the Company submits, is the equivalent of forty trains per day each being delayed approximately 5.75 hours.

The Union submits that there is nothing extraordinary, and certainly nothing temporary, about the situation which the Company describes. At best, it argues, what is disclosed is a general overall increase in traffic, spread evenly across all days of the week, in a manner that retains the historic pattern. While the Arbitrator does not dispute that characterization, in the specific circumstances of the case at hand I am not persuaded that it is fully responsive to the language of clause 8.17 of the collective agreement. The fundamental test is whether a departure from the standard rest days "… is necessary to meet operational requirements". As reflected in **CROA 2464** it is not only temporary circumstances, but also an "urgent circumstance" which may necessitate a departure from the normally scheduled rest days.

Is urgency demonstrated in the case at hand? In approaching that question the Arbitrator is impressed with the fact that the Company does not seek a general change in scheduled rest days. Rather, its proposal is to limit the changes to a relatively short period of time, some ten weeks, during the late season high traffic period where

volumes of grain and potash shipments do create a particular level of congestion which adversely affects normal operational requirements. In the Arbitrator's view the ability to schedule work blocks in such a way as to minimize the clearly unacceptable rates of delay registered on the territories in question can fairly be characterized as a response to a clearly identified situation of urgency, for a defined and limited period of time. In my view the adjustment in question does fall within the exception contemplated within clause 8.17 of the collective agreement. The Company has, in the circumstances of the case at hand, satisfied the onus of demonstrating that the temporary adjustment in rest days which it seeks to implement is justified as necessary to meet operational requirements, failing which having resort to additional relief service or working employees on their assigned rest days might otherwise be necessary.

For these reasons the grievance must be dismissed.

May 15, 2006

(signed) MICHEL G. PICHER
ARBITRATOR