CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3642

Heard in Montreal, Thursday, 10 January 2008

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE – CORPORATION:

Was the opening of Vancouver terminal in December 2007 a material change under the terms of article 25 of collective agreement 1.4?

CORPORATION'S STATEMENT OF ISSUE:

The Union submits that in establishing a terminal in Vancouver the Corporation violated article 25 and article 103 of collective agreement 1.4. The Union submits that the Corporation violated Item 4 of the Special Agreement in bulletining positions in Vancouver and in failing to bulletin positions in Kamloops. The Union submits that the Corporation has violated sections 94 and 50 of the *Canada Labour Code*. Finally, the Union submits that the Corporation has violated an agreement dated April 24, 1992.

The Corporation submits that the opening of Vancouver was not a material change under the terms of article 25 of collective agreement 1.4. It had no significantly adverse affects on locomotive engineers. In the alternative, the process did not apply to this change under article 25.6. The Corporation maintains that it is permitted to open terminals upon 30 days' notice pursuant to article 106 of the collective agreement.

The Corporation denies the allegations regarding bulletining positions and submits that they are irrelevant to this dispute. The Corporation denies the allegation of violations of the *Canada Labour Code* and submits that they are irrelevant, unproven and inappropriate in this forum under the circumstances. The Corporation has no knowledge of the allegation regarding an agreement dated April 24, 1992 and is unable to respond. The Corporation reserves all rights to respond to the allegations at a later date.

DISPUTE – UNION:

Claim of the Union that the Corporation violated article 25 and article 103 of collective agreement 1.4 in unilaterally establishing a new home station for locomotive engineers at Vancouver and changing operations between Vancouver and Kamloops, without providing at least six months notice and negotiating measures with the Union to minimize the significant adverse effects.

UNION'S STATEMENT OF ISSUE:

On December 9, 2007, the Corporation established a new home station for Locomotive Engineers at Vancouver, BC. Vancouver was previously closed as a home station effective January 15, 1990, as a result of the run through of Boston Bar on that date. The closure was the result of an Article J Notice implemented pursuant to the Special Agreement made pursuant to the *Railway Passenger Service Adjustment Assistance Regulations***.**

The Union submits that the Corporation's unilateral decision to establish Vancouver as a home station for work formerly performed by Locomotive Engineers based in Kamloops, BC required notice and negotiations under the

provisions of Article 25 of Agreement 1.4. The Corporation's initiative represents a change in home stations as contemplated in Article 25.1.

The Union submits that the Corporation's change in home stations has had a significantly adverse effect on Locomotive Engineers, resulting in the loss of at least four positions at Kamloops.

The Union maintains that the Corporation was obligated to provide at least six months advance notice to the Union and to negotiate measures with the Union to minimize any significant adverse effects on Locomotive Engineers.

The Union submits that Article 103 of Agreement 1.4 governs the establishment of new home stations. In entirety, Article 103 contemplates the parties reaching agreement in designating a terminal as a home station and establishing appropriate runs. Where a significant adverse effect on Locomotive Engineers will result, the Corporation is required to serve notice and to negotiate as prescribed by Article 25, Agreement 1.4.

The Union contends that the Corporation has violated the terms and conditions of the April 24, 1992 Memorandum of Agreement, which was the result of a material change notice issued on November 27, 1991, under the provisions of Article 89, Agreement 1.2, concerning changes made to the schedules of the Western Transcontinental Trains 1 and 2 affecting Locomotive Engineers in Western Canada.

The Union submits that the Corporation's failure to serve notice and to negotiate the matters outlined in Article 25.2 of Agreement 1.4 regarding appropriate timing, appropriate phasing, hours on duty, equalization of miles, work distribution, appropriate accommodation, bulletining, seniority arrangements, learning the road, and use of attrition, has resulted in those issues being decided unilaterally by the Corporation. This has resulted in multiple related violations of the collective agreement.

The Union submits that the Corporation violated Item 4 – Filling Permanent Vacancies at VIA Other Than Those Covered in Item 3, of the Transfer Agreement, by failing to ensure that the positions at Vancouver were properly advertised to Locomotive Engineers working at CN.

The Union further contends that the Corporation violated both Item 4 of the Transfer Agreement and Article 104.6, Agreement 1.4, by failing to advertise the permanent vacancies at Kamloops created by the retirement of Locomotive Engineers Lewis, Gibson, and Finley.

Finally, the Union contends that the Corporation has violated Section 94(2)(c) and Section 94(1)(a) of the *Canada Labour Code* by undertaking a program of communicating directly to the Union's membership at Kamloops at a meeting on November 21, 2007, in an attempt to extract further job reductions in the context of the change in operation. In addition, the Union contends that the Corporation has violated Section 50(b) of the *Code* by violating the statutory freeze provisions during collective bargaining.

The Corporation disagrees with the positions taken by the Union.

FOR THE UNION:	**FOR THE CORPORATION:**
(SGD.) B. R. WILLOWS	**(SGD.) E. J. HOULIAN**
GENERAL CHAIRMAN	**DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Corporation:

E. J. Houlihan	– Director, Labour Relations, Montreal
P. McCarron	– Director, Train Operations – West
A. Richard	– Sr. Advisor, Labour Relations, Montreal
J. Rondeau	– Agent, Labour Relations, Montreal

And on behalf of the Union:

B. R. Willow	– General Chairman, Edmonton
T. Markewich	– Senior Vice-General Chaiman, Edmonton
S. Barr	– Local Chairman, Kamloops
R. Dyon	– General Chairman, VIA Central, Laval
J. Tofflemire	– General Chairman (ret'd), Stratford

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Corporation encountered substantial inefficiencies and delays in the operation of its trains between Kamloops and Vancouver, British Columbia. Part of that delay was due to the fact that all running trades employees operating between Kamloops and Vancouver were home stationed at Kamloops. Frequently, by reason of delays in operations sometimes unforeseen, and not infrequently because of the booking of rest of crews enroute, the Corporation found itself required to rescue trains short of Vancouver, a process which involved calling in a separate crew on each occasion, with considerable resulting delay. The unchallenged material before the Arbitrator confirms that the rate of on-time service in the Kamloops – Vancouver corridor declined to an unacceptable level in 2007.

As a first measure to ameliorate the situation, on May 11, 2007 the Corporation's Manager of Train Operations – West, Mr. John Gosse, advised the Union's local representative that the Corporation would eliminate assigned service at Kamloops, placing all locomotive engineers at that home station on a pool or spareboard basis. It is not disputed that that change involved an alteration of long past practice, giving rise to a separate grievance filed by the Union. Additionally, during the course of 2007, three locomotive engineers left service at Kamloops, two by way of retirement and one as a result of a resignation.

Finally, on November 7, 2007 the Corporation's Director, Train Operations, VIA Rail West, advised the Union that a new terminal for locomotive engineers was being established at Vancouver, to respond to operational and productivity concerns. On the same day the Corporation bulletined four new locomotive engineer positions at Vancouver, it being explained that the incumbents in that new home station would operate in a pool between Vancouver and Chilliwack on the Yale Subdivision and Mission on the Cascade Subdivision. In essence, the Corporation established service out of Vancouver for the southern-most segment of territory between Kamloops and Vancouver. By simultaneously introducing layovers for Kamloops-based crews at Chilliwack/Mission, the Corporation was able to avoid the previously significant cost of deadheading Kamloops based crews and the costs and delays associated with rescuing trains unable to reach Vancouver from Kamloops by reason of their crews either booking rest or exceeding their permissible hours in service before reaching Vancouver.

The Union maintains that what transpired was the introduction of a change in home stations which, it argues, must compel the employer to provide six months' notice as contemplated under article 25.1 of the collective agreement. That article reads as follows:

> **25.1** Prior to the introduction of run-throughs, or changes in home stations, or of material changes in working conditions which are to be initiated solely by the Corporation and would have significantly adverse effects on locomotive engineers, the Corporation will:
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> **(a)** Give at least six months advance notice to the Brotherhood of any such proposed change, with a full description thereof and details as to the anticipated changes in working conditions; and
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> **(b)** negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers but such measures shall not include changes in rates of pay.

The first position of the Corporation is that there has not in fact been a change of home stations, to the extent that no employees were compelled to change their home stations, and in fact none of the Kamloops-based employees were forced to move to Vancouver. It stresses that the same number of employees service the territory between Kamloops and Vancouver as was the case before, that the four employees engaged at Vancouver bid on those assignments voluntarily, and that in fact there has been no loss of work or work opportunities for any employees.

The Union's representative stresses that matters might have been substantially different, particularly for the employees who decided to retire or resign, if the Corporation had provided notice of the new home station at Vancouver six months prior to its implementation, as the Union argues it was required to do. Implicit in the Union's submission is that the Corporation improperly timed the change at Vancouver so as to benefit from the attrition of employees at Kamloops, in an effort to avoid the need for a material change notice under article 25.1 of the agreement.

This Office has had considerable occasion to consider whether the movement of an assignment of work from one home station to another is such as to trigger the requirement for a six month material change notice of the type contemplated in article 25.1 of the instant collective agreement. At one time the mere declaration of a change in home stations was, of itself, viewed as sufficient to trigger the requirement for a notice, whether or not adverse impacts were immediately demonstrated. That, for example, is reflected in **CROA 645**, a grievance between the Canadian National Railway Company and the instant Union, in its predecessor form. In that case what was then article 110.01 of the collective agreement contained language substantially similar to that found in article 25.1. Additionally, however, article 110.1(j) stated, in part "The applicability of this Article 110 to run-throughs and changes in home stations is acknowledged." Given that language Arbitrator Weatherill found that notice must be given, independently of whether there were adverse effects on locomotive engineers demonstrated.

The parties have not drawn to the Arbitrator's attention any similar provision as found in sub-paragraph (j) above in the instant collective agreement. Indeed, in a significant line of authority, commencing with **CROA 332**, it has been found that the movement of work from one home station to another can, depending on the circumstances, be part of the traditional reassignment of work inherent in the nature of the work performed by the employees, a general exception to the material change rule also found within article 25.6 of the instant collective agreement. That reasoning has held through a number of awards, including decisions interpreting and applying the collective agreement of the Brotherhood of Locomotive Engineers. In **CROA 3332** the following comment appears:

> This Office has long held that the reassignment of work at home stations is clearly inherent in the nature of the work in which locomotive engineers are engaged within the meaning of article 89.6 of the collective agreement. Changing the home terminal of an assignment was specifically recognized as not constituting material change for the purposes of article 89 in **CROA 332**. Similarly, **CROA 1444** confirms that the relocation of a wayfreight assignment from one home terminal to another is in the nature of normal changes inherent in railway operations, and does not constitute a material change (see also **CROA 1167, 2893, 2973**).

When the foregoing approach is applied to the case at hand, the Arbitrator has considerable difficulty with the position of the Union. It is not disputed that there has been no loss of employment or employment opportunities for employees home stationed at Kamloops. Clearly the Corporation was under no legal obligation to fill the positions of those employees who chose to retire or resign from service. It could properly use the fact of that attrition to reorganize its operations so as to gain greater efficiencies. The changing of part of the assignment on the territory between Kamloops and Vancouver, by the establishment of four locomotive engineer's positions at a new home station in Vancouver, is itself very much a part of the everyday adjustments in operations inherent in the management of running trades services within a railway. For reasons well articulated in the cases cited above, such an adjustment is recognized to be inherent in the work of locomotive engineers. I am satisfied that in the case at hand the exception to the material change obligation found in article 25.6 of the instant collective agreement would therefore apply.

Additionally, even if the foregoing analysis were incorrect, there is no apparent basis upon which it can be concluded that the change implemented by the Corporation has had any adverse impacts on employees. As noted above, the same number of employees, albeit now at two home stations, service the territory between Kamloops and Vancouver. None have suffered any loss of work or work opportunities, it being clear that the elimination of deadheading cannot, of itself, be viewed as an adverse impact.

The Union raises a number of other concerns claiming, among other things, that the Corporation violated certain provisions of the **Canada Labour Code**, by introducing the new home station of Vancouver during the freeze period for the renewal of the collective agreement under the **Code**, and by discussing alternative management options with employees at Kamploops in response to a letter of concern sent by employees to the Corporation's Chief Executive Officer, a discussion which took place without the Union's involvement. Given that the grievance cannot succeed with respect to the alleged violation of the collective agreement, the Arbitrator does not consider it appropriate to comment on the alleged violations of the **Code** or to make any determination in that regard. It would appear that in these circumstances it is more appropriate to defer those issues, should they remain outstanding, to the tribunal primarily charged with overseeing the administration of the **Canada Labour Code**.

Nor does the Arbitrator make any determination with respect to the alleged violation of the Corporation's obligation to post the permanent vacancies at Vancouver to the attention of locomotive engineers employed at CN Rail. The unchallenged evidence is that the Corporation did communicate the job posting to CN which, apparently, relayed those to the attention of its employees via the CATS system. The Union has not addressed the Arbitrator to

any language of the collective agreement or any other agreement which would expressly require the form of communication which it maintains should have been followed. It may well be that this is an area for further discussion and negotiation. I am also satisfied that there is no merit to the Union's allegation of a violation of article 103 of the collective agreement. The Corporation did not require the Union's agreement to the establishment of a new home station (**CROA 3332**).

This award is without prejudice to the Union's ability to grieve separately based on a memorandum of agreement, a ground withdrawn for procedural purposes in the instant case.

For all of the foregoing reasons the grievance must be dismissed.

January 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR

SUMMARY – CROA 3642

Policy grievance – claim negotiation to reduce/mitigate materially adverse effects when home station/terminal of train changed – change inherent in work – no adverse effects – GRIEVANCE DISMISSED

KEYWORDS – 3642

VIA- TCRC January 2008 material inherent change notice home station terminal dismissed adverse effect dismissed