CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4117

Heard in Montreal, Tuesday, 10 July 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal of the Company's unilateral notice of cancellation of the Fatigue Management Plan at Cranbrook and Fort Steele.

UNION'S STATEMENT OF ISSUE:

In June 2012, the Company served notice on the Union that it would discontinue time pools and scheduled days off for all running trades employees at Cranbrook/ Fort Steele effective July 12, 2012. The time pools and scheduled days off in question are part of a Fatigue Management Plan that was negotiated in good faith pursuant to a February 27, 2009 letter of understanding regarding Cranbrook terminal.

The Union contends that the Company's June 2012 initiative to cancel the Fatigue Management Plan that was pursuant to the February 27, 2009 letter of understanding violates the terms of the collective agreement covering, respectively, locomotive engineers as well as conductors, trainmen and Yardmen (etc.), as well as the *Canada Labour Code* and the terms of the recently enacted *Bill C-39*. In addition, the Company is estopped from seeking to cancel the Fatigue Management Plan.

The Union seeks a declaration that the proposed cancellation of the Fatigue Management Plan at Cranbrook and Fort Steele violates the collective agreements, *Canada Labour Code*, *Bill C-39* and/or past practice. The Union requests an order from the arbitrator that the Company cease and desist from its proposed cancellation of the Fatigue Management Plan at Cranbrook and Fort Steele.

The Company disagrees with the Union's contentions.

FOR THE UNION:

(SGD.) D. R. ABLE
GENERAL CHAIRMAN – LE WEST

(SGD.) D. W. OLSON
GENERAL CHAIRMAN – CTY WEST

There appeared on behalf of the Company:

R. Hampel	– Counsel, Calgary

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Toronto
D. R. Able	– General Chairman, Calgary
D. Fulton	– Vice-General Chairman, Calgary

INTERIM AWARD OF THE ARBITRATOR

The Union seeks an interim order from this Office, effectively directing the Company to cease and desist from the implementation of the discontinuance of time pools and scheduled days off for running trades employees at Fort Steele. It is common ground that on June 12, 2012, the Company issued to the Union a notice that it would end the time pool and scheduled days off arrangement at Fort Steele as of July 12, 2012.

The position of the Union is that the parties made an agreement with respect to the establishing of the time pools and scheduled days off at Fort Steele by way of a letter of understanding dated February 27, 2009. It is the Union's position that that agreement must now be viewed as effectively a part of the collective agreement, and that the Company is in violation of the collective agreement by reason of the notice which it provided on June 12, 2012. The merits of the grievance, which may be

scheduled to be heard in September of 2012, will involve the Union taking the position that the Company is not at liberty to depart from what it maintains is a firm agreement that is tantamount to a collective agreement provision.

The Company questions the Union's perception of the letter of understanding of February 27, 2009, arguing that it was made in contemplation of establishing a pilot project as outlined in a letter of October 23, 2009, an arrangement which in fact either party could terminate by thirty days' written notice. The Union counters that given the length of the practice which was installed at Fort Steele, matters had proceeded beyond the phase of a pilot project to where the employees were entitled to expect ongoing adherence to the time pool system and scheduled time off previously established.

The Union alleges that the Company has violated the collective agreement, the **Canada Labour Code**, and also that its change in working conditions is contrary to the freeze provisions of **Bill C-39**, which recently legislated an end to a strike lawfully engaged in by the Union. In the circumstances, the Union submits that this is an appropriate case for interim relief in the form of an injunctive declaration pursuant to the discretion of the Arbitrator under section 60(1)(a.2) of the **Canada Labour Code**.

I agree with the Union that the jurisprudence in respect of this discretion has generally evolved to established a consensus as to the two part question to be answered in an application of this kind:

1. Is there a fair question to be arbitrated?

2. Where does the balance of perceivable damage or harm lie?

When that two step analysis is applied in the instant case, there is clearly a question to be arbitrated, as the parties are obviously at odds with respect to whether the Company can unilaterally terminate the time pool system established at Fort Steele. The more substantial question involves the balance of damage or harm. In my view the Union's argument is more compelling in that regard. It stresses, and I agree, that the advantages of time pools and regularly scheduled time off are of real value to employees in the immediate, to the extent that they guarantee a certain life style and the ability to enjoy family time on a relatively planned basis, something which is far more difficult under normal methods of work scheduling in the industry. Should the Union's grievance ultimately prove successful, how can the employees who will have lost the advantage of predictable working hours and time off, later be compensated should the grievance succeed on its merits? I find it difficult to see how any true reparation could be effected.

With respect to the Company's interest, while it appears that there may have been a time, apparently following the strike, where there was a substantial need to use management personnel to operate trains, the material which it presents on this preliminary motion does not appear to stress that that is a current and ongoing problem. In other words, there is reason to believe that the Company can continue to operate and properly service its customers on a reasonably efficient basis between now and the hearing of the grievance on its merits, possibly in some two months' time, if it is required to maintain the *status quo*.

When the above interests are balanced, I am compelled to conclude that the balance of foreseeable damage is greater for the employees should the relief requested not be granted.

For these reasons the Union's request is allowed. The Arbitrator directs that the Company cease and desist from the planned implementation of the notice of June 12, 2012 to discontinue time pools and scheduled days off at Fort Steele commencing July 12, 20012. The Company is directed to maintain the *status quo* until such time as the grievance is heard and disposed of on its merits.

June 17, 2012

(signed) MICHEL G. PICHER
ARBITRATOR