AH 668

IN THE MATTER OF A DISPUTE

B E T W E E N:

CANADIAN NATIONAL RAILWAY COMPANY
(The “Company” or “Employer”)

- and -

THE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, SYSTEM COUNCIL NO. 11
(The “Union")

Violation of Article 4 Appendix M of Agreement 11.1

INTERIM APPLICATION

Arbitrator
Richard I. Hornung, Q.C.

For the Company:
Doug Fisher - Senior Director Labour Relations
Shelley Smith - Manager Labour Relations

For the Union:
Michael Church - Counsel
Lee Hooper - General Chairman

Hearing Date:
August 17, 2018

Hearing Location:
Calgary, Alberta

Decision Date:
August 18, 2018

Adjournment Application

The Company seeks an adjournment of the hearing scheduled for next Friday (August 24, 2018) in Edmonton, Alberta. According to the Company, the Union failed to file its Joint Statement of Issue (JSI) on or before August 2, 2018 as it was required to do pursuant to the provisions of Article 13.19.

On July 24, 2018, after the Company forwarded a draft copy of its proposed JSI to the Union, representatives of both parties agreed that the Union would either accept the JSI proposed by the Company, or otherwise file its own, on or before August 2, 2018.

Having not received a response from the Union, the Company sent an email to the Union and Arbitrator on August 13, 2018, wherein it alluded to the mutual agreement to extend the time for filing the same to August 2, 2018, and asked for an adjournment of the hearing to allow it to prepare its case. In the email, reference is made to the fact that the "*Company is disadvantaged*" by the late filing. On that day, and in response to the Company's email, the Union filed a copy of its JSI.

The Union opposes the Company's request. It points out the similarity between the JSI's filed by each of the parties which also reflects the information contained in the exchanges of information at the first and second steps of the grievance process. It asserts that, given the same, the Company is neither prejudiced or disadvantaged by the late filing nor has it

provided any evidence or information pursuant to which such a conclusion can be drawn. The Union suggests that, in the absence of such a determination, I should invoke my jurisdiction, pursuant to *Section 60* of the *Canada Labour Code*, override the provisions of the Article 13.19 of the Collective Agreement and deny the Company's request.

The Company argues that the issue is narrow and focused on the Union's failure to meet the mandatory time lines established in Article 13.19 of the Collective Agreement. It asserts that, pursuant to that Article, an agreement was reached to extend the time for the Union to file its JSI to August 2, 2018. The Union failed to do that. Accordingly, the mandatory time line should be enforced.

Article 13.19 provides as follows:

> *"A Joint Statement of Issue containing the facts of the dispute and reference to the specific provision or provisions of the Collective Agreement allegedly violated, shall be jointly submitted to the arbitrator no less than 30 calendar days in advance of the date of the hearing. In the event the parties cannot agree upon such Joint Statement of Issue, each party shall submit a separate Statement of Issue to the Arbitrator no less than 30 calendar days in advance of the date of the hearing and shall at the same time give a copy of such statement to the other party. (The 30 day requirement may be waived by mutual agreement.)"*

Clearly, the parties agreed to specific time lines with respect to the filing of JSI's. They also agreed that the specific time lines can be waived by mutual agreement.

In the present case the parties agreed, on July 24, 2018, that the matter scheduled for hearing on August 24, 2018 would proceed to arbitration conditional upon the Union filing its JSI by August 2, 2018

Just as the Company did not identify the specific prejudice or disadvantage that would beset it if the matter proceeded, the Union did not provide an explanation as to why the time extension of the mandatory time lines in Article 13.19 was not met on or before August 2, 2018.

The provisions of Article 13.19 are both clear and mandatory. The parties specifically agreed to meet the established time lines as set out therein. In my view, reliable and enforceable time lines are essential to the efficient, effective and prompt determination of arbitration disputes.

In those cases where appropriate circumstances are shown to exist, time extensions pursuant to Sec. 60 of the *Labour Code* will be considered. However, in the absence of those appropriate circumstances (on either side), the parties ought to be held to their specific agreement. The consequences of doing so represents a knife of practicality which cuts equally both ways and which ensures that grievances proceed in a timely and informative fashion.

I find no compelling or exceptional circumstances that would convince me to invoke my remedial jurisdiction, pursuant to *Section 60 of the Labour Code,* to override the specific terms of the Collective Agreement. In the circumstances, the Company is entitled to rely on the provisions of Article 13.19.

Accordingly, this matter scheduled for August 24, 2018 will be adjourned with the cancellation costs and the costs of this application to be shared equally between the parties.

August 18, 2018

Richard I. Hornung, Q.C.