

IN THE MATTER OF A DISPUTE

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE
("Union")

- and -

CANADIAN NATIONAL RAILWAY COMPANY
("Company")

**Policy Grievance Concerning Company's Ordering of Extended Run
Locomotive Engineers to Perform Turn Service at the AFHT**

Arbitrator

Richard I. Hornung, Q.C.

FOR THE UNION:

Ken Stuebing – Counsel
KC James – General Chairman
Mike King – Senior Vice General Chairman
Kevin Ilchyna – Vice General Chairman
Neil Irvn – GST Local Chairman
Ryan Anderson – Local Chairman

FOR THE COMPANY:

Manny Galan – Senior Manager, Human Resources
Susan Blackmore – Senior Manager, Labour Relations
Amin Abdulle – Manager Crew Scheduling, SMC - Edmonton

Hearing Date:

May 22, 2019

Hearing Location:

Calgary, Alberta

Decision Date:

July 10, 2019

AWARD**I****JOINT STATEMENT OF ISSUE**

On February 7, 2018 the Company called Winnipeg based Locomotive Engineer Glen Choma in turnaround service at Fort Frances on train L34241 04.

The Company contends that Article 10 allows for the practice and does not prevent them from using it. The Company also relies upon Article 64.25 to ensure that the mileage between the two terminals is properly allocated.

The Union contends that the Company is violating Article 61.6, Article 57.3(d) and the long-standing use of Article 10 as it pertains to Winnipeg crews at the away from home terminal of Fort Frances.

Additionally, the Union contends that Article 57 provides for jurisdiction between home terminals, and that the only home terminal touched on this tour of duty was Fort Frances.

II

I am grateful for the extensive review the parties provided relative to the history of the work jurisdiction and operational exclusivity centered around home terminals prior to and since 1995.

In 1995, Extended Run Service (ERS) was implemented via collective bargaining negotiations subject to the interest arbitration by Justice Adams. With the implementation of ERS, selected home terminals such as Rainy River, that previously had distinct and exclusive jurisdiction, lost that designation and were now covered via shared jurisdiction between two Extended Runs from redistributed home terminals. For example, prior to the implementation of the ERS, trains would run between Winnipeg to the home terminal of Rainy River and back. Similarly, they would run between Rainy River and Fort Frances. Following the implementation of the ERS, Rainy River was no longer a home terminal

and trains from Winnipeg to Fort Frances would “*run through*” it. Winnipeg and Fort Frances became the designated home terminals.

By Addendum No. 79 (Union Tab 4) the parties established a set of principles in order

“... to protect employees and avoid restrictive work rules that set of principles would be used to guide implementation and ongoing operation of extended runs....”

To ensure that each terminal preserved the work-load that it had prior to the implementation of the ERS, the parties agreed to apportion the shared jurisdiction based on the amount of mileage over which each home terminal previously had exclusive work ownership (Art. 64.25). This led to Winnipeg crews being entitled to 72.7% of the work and Fort Frances crews being entitled to 27.3%.

The issue here arises from the Company's assignment of Winnipeg based Locomotive Engineer, Glen Choma to perform rescue turnaround service at the Away From Home Terminal (AFHT) of Fort Frances on February 7, 2018. Mr. Choma arrived at Fort Francis on an extended run from Winnipeg on Feb. 6, 2018. He ultimately returned to Winnipeg on February 8, 2018 - following the turnaround in Fort Frances - after having spent approximately 70 hours on the round trip to Fort Frances.

III

RELEVANT PROVISIONS

The relevant portions of the Collective Agreement read as follows:

Limit to Turnarounds Freight Service

- 10.1 *A locomotive engineer will not be held at the away-from-home terminal to make more than one round trip out of, or tour of duty at the away-from-home terminal.*
- 10.2 *In the event of locomotive engineer stands first-out, after having worked the turnaround trip or tour of duty, away from the home terminal and another trip or tour of duty is to be made, he may elect whether or not he may make such trip or*

tour of duty or require the locomotive engineer standing behind him to do so; and the exercise of this right will not constitute a run around.

Home Stations

57.1 *Home Station means a terminal designated by the Company and the Locomotive Engineers' General Chairman as a Headquarters of Locomotive Engineers on various runs.*

Establishment

57.2 *Unless otherwise agreed between the General Chairman and the Company, when a new home station is established bulletins shall be issued on the seniority district advertising all positions out of that station and Senior Locomotive Engineers applying will be assigned.*

Jurisdiction

57.3 *Except when otherwise arranged between the General Chairman of the B. of L.E. and the appropriate officer of the Company, the following will apply when establishing the home station of assigned or unassigned service:*

- (a) *Trains operating over territory entirely under the jurisdiction of one home station will be manned from that station.*
- (b) *Trains operating over only a portion of a subdivision will be manned by the home station from which the run begins.*
- (c) *Trains operating over territory under the jurisdiction of two or more home stations and running between two home stations will be manned from the station having the greatest amount of mileage in the territory over which the trains operate.*
- (d) *Trains operating over territory under the jurisdiction of two or more home stations and only touching one home station will be manned from that station.*
- (e) *Trains which operate over territory of two or more home stations but do not touch any home station will be manned from the station having the greatest amount of mileage in the territory over which trains operate.*

Rescue Service

61.6

- (a) *In order to provide rescue service to trains in extended runs, yard crews may be used within a distance of 50 miles outside the established switching limits.*
- (b) *When yard employees are used in rescue service, it will be considered yard Foreman only operation and the yard helper, if any, may be deployed at the discretion of the Company.*
- (c) *Crews will be called in rescue service utilizing **any one of the following options:***
 - *Yard crews within a distance of 50 miles outside established switching limits*
 - *Spareboard*
 - *Pool, extended run or single sub (when single sub crews are used they will be kept on their own territory)*

Extended Runs

64.25

- (a) *In the application of paragraph 60.14 the workload between terminals will be divided based on the ratio of subdivision mileages. For this purpose, the subdivision mileages shall be the mileage between the point where road miles commence at the initial terminal and the point where road miles cease at the final terminal prior to the implementation of this Agreement.*

IV**UNION SUBMISSION**

The Union argues that although Article 10 provides for a locomotive engineer to make one round trip out of the AFHT, that Article must be read subject to the “*Jurisdiction*” Article 57.3(d) which makes it clear that because Engineer Choma’s train made a round trip out of Fort Frances, and “*touched*” only Fort Frances, the rescue work it performed therefore belonged to a Fort Frances crew. In paras. 78 – 103 of its Submissions it states:

78. *The Union maintains that Article 10 does not apply to employees in extended run service as alleged by the Company, and that in any event the Company’s practice is prohibited by Article 57.3(d):*

...

80. *Article 57.3(d) provides that “(d) Trains operating over territory under the jurisdiction of two or more home stations and only touching one home station will be manned from that station.” The territory on which Mr. Choma was required to operate on February 7, 2018 is under the jurisdiction of two home stations: Winnipeg and Fort Frances. However, the work that was assigned to Mr. Choma—turnaround rescue service—only touched one home station. At no time on February 7, 2018 did Mr. Choma touch any other home station than Fort Frances. That work was therefore the work of employees home terminalled at Fort Frances.*

81. *... The meaning and intent of Article 57.3(d) is plain and it protects the work jurisdiction of Fort Frances home terminalled employees and their ownership of the turnaround rescue work at issue in this matter.*

97 *In short, it is the Union’s position that the Company is violating the language of Article 57.3(d) when it elects to use Article 10 to call crews in turn service who are in “extended run” service from the away from home terminal. Additionally, the longstanding practice to not use extended run crews in turnaround service enforces the Union’s position and is supported in Company documents provided. The result of the Company’s change*

in practice causes; crews in extended run corridors to be subject to longer time away from home and the inevitable line up disruptions that occur when rescue turns are required.

Finally, in para. 103, it summarizes its argument relative to the interaction of Articles 10 and 57.3:

Again, the Union's position is that Article 10 must be read as a single subdivision Article and cannot supersede Article 57.3. Furthermore, the Company's present Director of Labour Relations committed in writing that it would not use extended run crews in turn service. The Company is now seeking to achieve an erosion of home terminals' right to turnaround service, and to further expand the use of extended run crews beyond straightaway service only, by ignoring the terms of the Collective Agreement. The Company can only achieve its goal through main table bargaining.

Additionally, it argues that, notwithstanding the language of Articles 10 and 61.6, past practice has been that rescue service by extended run crews from Winnipeg were only done in straightaway service. In support of its position, it filed a series of documents (Union Documents; Tabs 8/9) which it says support its position that there was a clear expectation that Extended Run Service would be straightaway service only. Specifically, it asserts that the comments by Mr. Torchia, the Company's Assistant VP Labour Relations, on September 29, 1995 that :

"Rescue Service

When extended run pool crews are utilized in rescue service the intent is to order them in straightaway service."

represents a commitment by the Company to only use extended run engineers in straightaway rescue service.

The Company disputes that interpretation and points out that the document is merely a summary of the items being discussed/negotiated relative to the implementation of Extended Run Service. As well, the document was not signed or agreed to by the Union and therefore cannot be regarded as an *ad idem* commitment. In any event, it suggests that taken in context, the language only reflects the Company's proposed "*intent*" to use Extended Run crews in straightaway services. Having considered both positions, I am not persuaded that the document confirms the Union's suggestion that the Company

thereby committed to use extended run crews only in straightaway rescue services or that the reference in Mr. Torchia's letter – by itself - is sufficient to alter the language of the Collective Agreement.

The Union also argues estoppel on the basis that the use of Extended Run crews in straightaway rescue service was the only practice employed by the Company from the inception of the Extended Run Service in 1995 to 2014 - when the first of a series of incidents similar to the one before me arose and was grieved. All those grievances remain outstanding pending the determination of this one. The Company, in response, argues estoppel as well and suggests that the circumstances in this case reflect its repeated practice in the past without objection from the Union. Neither the Union's nor the Company's estoppel argument is convincing.

Further, in support of its interpretation, the Union argues that any miles in work assignments which are exclusive to a home terminal are not taken into consideration in the aggregate mile calculations in an Extended Run corridor:

"46. By contrast to the usual straightaway service which gives rise to the 27.3 – 72.7 share balance, any mileage accrued by Winnipeg crews while at Fort Frances operating in turn service that touches only on Fort Frances is not being captured in the board adjustments. This necessarily causes a loss of work to the home terminal crews at Fort Frances. Such turn service work which is initiated from and belongs to Fort Frances should only be performed by employees whose home terminal is Fort Frances."

It asserts that the use of any AFHT crew to perform an assignment that properly belongs to the home crew at that station upsets the pro-rated balance of the Extended Run equities established via Addendum 75. Accordingly, having regard to the apportionment of work between Fort Frances and Winnipeg, any use of Winnipeg crews at the AFHT has the potential to cause an adverse loss of work to crews in the home terminal of Fort Frances and thereby skews the proportional balance envisioned in Article 64.25.

Finally, the Union asserts that the use of an Extended Run crew at AFHT's is governed by the principles contained in *Addendum No. 79* which were specifically established to protect employees and avoid restrictive work rules, and which were intended to apply to the implementation and ongoing operation of extended runs. It argues that the circumstances of this case demonstrate that involving the Grievor in turnaround rescue service at the AFHT has an adverse affect on the mileage calculations in the corridor; and, that if the Company's interpretation prevails engineers could be held at the AFHT and result in their being away from home for a period of up to 74 hours which would clearly affect their work/life balance.

V

COMPANY SUBMISSION

The Company argues that in assigning the Grievor (as it did) it was in compliance with the provisions of the Collective Agreement based on the explicit language of Articles 10 and 61.6 of the Agreement which provide for extended run; rescue turnaround service at an AHFT; and for such assignments to be considered within the mileage allocation as required by Article 64.25.

Furthermore, it points out that Article 61.6(c) explicitly envisions extended run crews to perform turnaround recue service when it provides that crews may be called in rescue service utilizing "*any one*" of the options of: "... *pool, **extended run** or single sub...*".

It asserts that Article 10 specifically provides for a Locomotive Engineer to make a maximum of one round trip out of an AFHT. It does not restrict what type of crew can perform such a tour of duty or what work may be done. The only limitation placed by Article 10 is that the Company cannot hold a locomotive engineer to perform more than one such tour. In support of its argument, the Company relies on **CROA 3621** wherein Arbitrator Picher considered the identical language of Article 10 and concluded that it provided for an employee to be held at AFHT for two purposes:

“Either making not more than one round trip out of the away-from-home-terminal or, alternatively, performing a tour of duty at the away-from-home-terminal. The latter option would appear to arise, for example, when an employee is called upon to do rescue work from the away-from-home-terminal or possibly perform yard service at that location...”

According to the Company, the use of extended run crews for turnaround services addresses its obligations under Article 64.25 to allocate the mileage appropriately:

40. *Article 64.25 clearly states that the Company must allocate the work according to subdivision mileage. If the Company exclusively utilized Fort Frances crews to perform rescue service at Fort Frances, as the Union is suggesting, the mileage allocation would be completely off because rescue service normally involves short distances, sometimes just a few miles, such as the case involving Mr. Choma.*

41. *Whereas straightaway service from Fort Frances to Winnipeg involves 199 miles. Thus, the Company may elect to have the Fort Frances crew remain available for straightaway service to Winnipeg instead of utilizing them exclusively to perform turnaround work of just a few miles.*

42. *Thus, the Company’s practice is not only well within the confines of the collective agreement (Article 10 and 61.6), but it is also necessary given the mileage allocation obligation per article 64.25. The Union’s suggestion to utilize Fort Frances crews for rescue work would lead to Winnipeg crews receiving a disproportionately higher amount of miles and consequently more earnings.*

Finally, in rebuttal of the Union’s position that Article 57.3 is dispositive of the issue before me and that it provides exclusive jurisdictions for the turnaround work to be done by the Fort Frances crew, the Company argues:

63. *First, the entire purpose of article 57 is to designate home stations. Article 57.3 specifically deals with establishing jurisdiction to home stations for assigned or unassigned service. This applies when a new run is established, and the Company and the Union must designate the home station.*

64. *Article 57.3 (d) deals with a run that only touches one home station. For example, if the Company established a new run (i.e. to service a new customer) from Rainy River to Fort Frances, then that train must be operated by Fort Frances crews because the train only touches one home station; that being Fort Frances.*

65. *Article 57.3 (d) does not apply to an established run, such as the Winnipeg to Fort Frances run. The parties have already established the home stations for this run. Furthermore, the train in question does indeed touch both terminals, since it originated in Winnipeg and was destined for Fort Frances. The fact that the train did not make it to Fort Frances is irrelevant.*

VI

DECISION

Article 10.1 makes it clear that the Company is entitled to assign engineers one round trip out of an AFHT. Article 61.6 makes it equally clear that in assigning Rescue Service the Company may utilize extended run crews.

Article 57.2 provides that in establishing "...a new home station..." certain protocols will be followed in assigning positions. Thereafter, Article 57.3 directs that: "... *the following will apply when **establishing the home station** of assigned or unassigned service: ...*". Articles 57.3 (a) – (e) then outlines the various permutations which will govern the establishment of the home station for that assigned or unassigned service. Given the language of Article 57.3 itself, I am of the view that it does not apply to the circumstances here. It is trite to say that when interpreting the language in an agreement, the document must be read as a whole and the provisions interpreted harmoniously with its purpose. Even leaving aside the language of Article 57.3 itself - which makes it apparent that the provisions of the same are intended to apply in circumstances "*when establishing the home station...*" - to accept the argument of the Union would require me to disregard the clear language of Article 10 (which directs that locomotive engineers can be held at an AFHT to complete one round trip) and Article 61.6 (which explicitly directs that to provide rescue the Company may utilize extended run crews).

As pointed out in *Collective Agreement Arbitration In Canada (4th Edition); (2009) Snyder et. al;* at page 29:

2.16 ... *if one of the two equally plausible meanings would strip a clause of any real effectiveness, it will be avoided. As such, where two interpretations of a provision are possible, the one which best harmonizes the document as a whole should be chosen.*

...

2.17 ...

It is a recognized canon of construction that in interpreting documents it should be construed so as to give effect to every word, and a word should not be disregarded if some reasonable meaning can be given to it. ...

It is equally impossible to accept the contention ... that (a section) is meaningless and consequently this board can attribute no meaning to it, as obviously the parties intended the (section) to have meaning or the parties would not have bothered to insert it."

It is more in keeping with the harmonious interpretation of the Collective Agreement as a whole to accept the interpretation proffered by the Company that the provisions of Article 57.3(d) apply (as stated in the language of Article 57.3 itself) "... when establishing (a) home station ...". To do otherwise would result in the anomalous situation where the meaning and intent of both Articles 10.1 and 61.6 (c) would be compromised – if not made devoid - of any meaning as they relate to extended run service.

In **CROA 3621** (July 2007) a purposive interpretation of the language of Article 10 was provided. It dealt with a case which involved the utilization of crews outside their assigned territory by having them perform straightaway service from one AFHT to another AFHT. There the Union successfully argued that the Company's practice was a violation of article 64.1 of the Conductor's Collective Agreement which reads:

"An employee will not be held at the away-from-home terminal to make more than one round trip out of, or tour of duty at the away-from-home terminal."

In applying the identical language contained in Article 10, Arbitrator Picher commented as follows:

...Finally, the Union maintains that the intention of article 64 is that employees cannot be made to work from one away-from-home terminal to another away-from-home terminal. Its interpretation of article 64.1 is that crews held at an away-from-home terminal can only be assigned to perform one round trip out of that terminal or, alternatively, be assigned to perform a tour of duty at that terminal, and not to another away-from-home terminal.

[...]

The language of article 64.1 is also significant. It is noteworthy, in the Arbitrator's view, that the parties have chosen to speak of "the away-from-home terminal" rather than "an

*away-from-home terminal” or “away-from-home terminals” expressed in the plural. Under the language of article 64.1 an employee at his or her away-from-home terminal may only be held for two purposes: either making not more than one round trip out of that away-from-home terminal or, alternatively, performing a tour of duty at the away-from-home terminal. **The latter option would appear to arise, for example, when an employee is called upon to do rescue work from the away-from-home terminal or possibly perform yard service at that location....***

I accept Arbitrator Picher’s logic and its applicability to the circumstances before me. The persuasiveness of the same, as well as the clear meaning of the language as discussed earlier, lead me to conclude – and I so declare - that the Company had the authority to assign Engineer Choma to one round trip rescue service out of his AFHT on the day in question.

However, the above determination does not end the matter. While it is clear that the Company had the authority to assign Engineer Choma as it did, that determination does not address, nor resolve, the Union’s legitimate concern that scheduling Engineer Choma to the turnaround rescue service while on an extended run adversely skewed the ratio of subdivision mileage and adversely affected his work/life balance.

In *Addendum No. 79*, the parties agreed to a set of principles designed to: “... *protect employees and avoid restrictive work rules*” in order to “... *guide (the)implementation and ongoing operation of extended runs....*”. In addition, at page 5, the parties agreed:

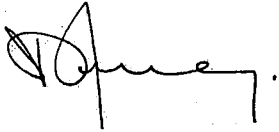
“... that employees will not be adversely affected by extended runs. However, in the unlikely event that there is an impact on employees which can be attributed to the introduction of extended runs, the Regional Steering Committee will address the matter and determine what remedial action, including any benefits covered by the Material Change provisions of the Agreements.

While the Company has the authority to schedule Engineer Choma to an extended run, with one turnaround service at his AFHT, there is an obligation on the parties to ensure that he was not adversely affected by the same.

Accordingly, I direct that the matter be referred to the *Regional Steering Committee* established in *Addendum No. 79*, to ensure that the consequences of this decision do not have an impact on employees - which is attributed to the extended run – that adversely affects an employee's work/life balance or the ratio of subdivision mileage.

I shall retain jurisdiction with respect to the application and implementation of this award in the event the Committee is unable to arrive at a determination within the parameters of *Addendum No. 79*.

Dated at the City of Calgary the 10th day of July 2019.

A handwritten signature in black ink, appearing to read "R. Hornung", with a stylized initial "R" and a horizontal line extending to the right.

Richard I. Hornung, Q.C.
Arbitrator