

IN THE MATTER OF AN AD HOC RAILWAY ARBITRATION

BETWEEN

CANADIAN NATIONAL RAILWAY COMPANY (CN)

And

**TEAMSTERS CANADA RAIL CONFERENCE (TCRC)
(Locomotive Engineers and Conductors/Trainpersons/Yardpersons)**

**Re: CN Request for Working Hours Increase in Winnipeg/Fort Francis Extended
Run Corridor (Sprague Extended Run Subdivision)**

Date: September 1, 2020
Arbitrator: Graham J. Clarke

Heard in person in Toronto on August 19-20, 2020 with some participants joining via
videoconference

APPEARANCES

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Award

BACKGROUND

1. This case concerns the application of the parties' negotiated Principles of Extended Runs (PER). CN has grieved that the TCRC unreasonably refused to consent to an increase in hours from 10 to 12 for an extended run.
2. In 2003 in *AH523*¹, Arbitrator Picher dismissed a similar CN grievance for the same extended run between the Symington Yard in Winnipeg, Manitoba and Fort Francis, Ontario. The parties call that extended run² the Sprague Extended Run Subdivision (Sprague Subdivision).
3. The Sprague Subdivision includes approximately 44 miles of track in the United States.
4. In *AH523*, Arbitrator Picher described the benefits the 1995 PER gave to both CN and bargaining unit employees, including greater traffic efficiencies, fewer terminals, higher earnings, and fewer days of work each month:

In 1995 the parties agreed to the implementation of extended runs in a number of corridors in Canada. The result of that initiative was the closing of certain terminals which would otherwise have been change off points for running crews, with crews running longer distances between terminals. The extended run arrangement allowed the Company to achieve efficiencies in the expediting of traffic and improvements in customer service. Certain improvements accrued to the Unions as well, including such factors as wage guarantees, guaranteed spareboards, eight hour time windows in scheduling and the opportunity to work fewer days in a given month with more earnings per trip.

...

The general rule under the collective agreements of both Unions is that employees in conductor-only service are entitled to book rest upon the completion of ten hours on duty. The extended runs agreement of 1995 recognized that employees could be required to work up to twelve hours, the

¹ [*Canadian National Railway Company v. Brotherhood of Locomotive Engineers and United Transportation Union*, AH523, August 13, 2003](#)

² Sometimes abbreviated as "ER" in this decision

maximum under the law, before being eligible to book rest on certain agreed extended runs³.

5. In its new grievance, CN argued that a significant transformation of the railway industry rendered unreasonable the TCRC's continued refusal to consent to an increase in hours⁴:

2. This dispute is about a necessary increase in working hours on the Sprague Extended Run from Winnipeg, Manitoba to Fort Frances, Ontario. In the 25 years since the Company and the Union first negotiated the extended run agreement, the railway industry has undergone a significant transformation. The combination of these new market realities and an exponential increase in train traffic has made it impossible for trains travelling on the Sprague Extended Run to consistently reach their destination terminal within the current 10 hour working threshold. Despite these conditions, the Union has refused to agree to the requested increase in working hours. CN submits that the Union's refusal is unreasonable.

6. The TCRC⁵ disagreed and blamed CN's operational decisions for delays on the Sprague Subdivision⁶:

14. The Union position is that the Company has failed to follow the principles of extended runs and has rebuffed any suggestions from the Union that would allow it to operate on the corridor without the need to increase the hours of service.

15. The Union advances the position that the Company refuses to initiate measures or take action to minimize delay at each home terminal that would reduce initial and final terminal time, for the sole purpose of cost savings.

³ U-2, page 0080

⁴ E-1, paragraph 2

⁵ The TCRC represents Locomotive Engineers (LE) under Collective Agreement 1.2 and Conductors/Trainpersons/Yardpersons (CTY) under Collective Agreement 4.3. Since the parties advised that the extended run provisions were the same in both agreements, this Award will cite from CBA 4.3 (CTY).

⁶ TCRC Brief, U-1, paragraphs 14-15

7. The parties' submissions used acronyms for key terminology including Initial Terminal Delay (ITD), Final Terminal Delay (FTD), and Total Time on Duty (TTOD), which adds together the train's run time along with the ITD and the FTD.

8. For the reasons which follow, the arbitrator concludes that CN, given the negotiated PER's terms, did not meet its burden of demonstrating that the TCRC had unreasonably withheld its consent to an increase in hours.

COLLECTIVE AGREEMENT PROVISIONS

9. The concept of "extended runs" relates to employees' right to book rest. In article 35.10(b)⁷ of CBA 4.3, CN and the TCRC have agreed when rest may be booked by those on extended runs. While most of the extended runs are listed at 12 hours; the shortest extended run, the Sprague Subdivision, is set at 10 hours.

10. Article 35.10(b) also contains a note referencing how the PER governs any changes to these negotiated hours for ERs⁸:

The hours on runs identified in this article may be increased, to a maximum of 12 hours, or decreased based on the principles set out in Appendix 65 of this Memorandum.

11. The PER in Addendum No. 65 in CBA 4.3⁹ sets out 9 principles¹⁰:

Principles of Extended Runs

1. Will not reduce the level of safety.
2. Will enhance transit time, reduce initial and final terminal time and improve customer service reliability.
3. Employees will be provided accurate line-ups to allow sufficient rest prior to starting an extended run.

⁷ See Appendix 1 to this Award for the full text of article 35.10(b)

⁸ In 2013, the parties agreed to increase the hours for the Smithers to Ridley Island/Prince Rupert from 10 to 11 hours: U-2; Tab 16

⁹ Addendum No. 79 in CBA 1.2

¹⁰ See Appendix 2 to this Award for the full text of Addendum No. 65

4. Employees will arrange to report for duty prepared to complete the assignment for which called.

5. At the crew ordering time extended run trains will be ready for the outbound crew to commence their duties which vary by terminal:

- i.e.: power on train, brake test completed, train coupled, etc.

6. Extended run trains will normally operate as hook and haul, however will perform customer services when other train service is not practicable i.e.:

- pick up a bad order

- set out or pick up

- provisions of conductor only agreement will apply

7. Conductors must be qualified to operate a locomotive when accompanied by a Locomotive Engineer.

8. Cab conditions of locomotives will be improved within defined time frames to provide a more suitable ergonomic environment.

9. Marshalling and customer service activity in extended run territory to be primarily performed by road switchers and wayfreights that will not be operated as extended runs.

It was agreed for these principles to be used, a set of measures and standards needed to be developed which tracked adherence to these principles. The measurement would be provided to the union and the company at regular intervals (monthly) and jointly reviewed on a regular basis. Both parties are committed to action when unacceptable deviation occurs.

12. After Arbitrator Picher's award in *AH523*, the parties negotiated additional rest provisions. In Addendum 81 of CBA 4.3¹¹, the parties agreed on additional mileage payments¹² for violations of the enroute rest provisions, as described in this extract:

The Company and Union are interested in and committed to establishing a better process to address this issue. The parties therefore have agreed that the following process will apply:

1. There shall be a 30 minute threshold. Any Company violations of the enroute rest provisions of the collective agreement at or under the 30 minute threshold

¹¹ Addendum 105 of CBA 1.2

¹² Employees are paid based on miles in the railway industry rather than time.

shall not result in any payment as provided herein or grievance for such payment, without mutual consent.

2. For any Company violations of the enroute rest provisions as provided for in the Collective Agreement of more than the 30 minute threshold the following payment shall be made:

a. 50 miles at the applicable class of service for the first hour or portion thereof and,

b. an additional 50 miles at the applicable class of service for all time over the first hour.

It is understood that such payments as provided herein are in addition to all other payments and/or earnings.

EXAMPLE:

10 Hour territory

10:30 – total time on duty-no payment

10:50 – total time on duty-50 mile payment

11:10 – total time on duty-50 miles + 50 miles (total 100 miles)

13. If employees work beyond 10:30 hours, then CN must pay them additional miles. The evidence disclosed that CN has paid large sums to TCRC members under Appendix 81, *infra*.

PARTIES' ARGUMENTS

CN

14. CN highlighted how times had changed in the 17 years since *AH523*. CN now deals with more trains, longer trains, and slower trains. Despite its significant efforts, including large capital investments in Winnipeg and along the corridor, CN alleged the Sprague Subdivision extended run had a "failure rate" of 40%. In its view, trains can no longer consistently complete the run within the negotiated 10-hour period in the collective agreements. In the face of these industry changes, CN argued that the TCRC's refusal to consent to an increase in hours was now unreasonable.

15. In CN's view, the increase in the volume of traffic and the average length of trains had offset its efforts to adhere to the PER and caused the high failure rate. CN attributed the longer trains in part to an increase in container shipments. The longer

trains were no longer a business choice but instead a market imperative and industry standard falling outside of CN's control. Longer trains also resulted in slower trains.

16. Longer trains also required more time to build, including by applying the more recent industry standard of distributed power configurations. This increased ITD. CN was forthright in its position that longer trains impacted the feasibility of the PER's "ready train concept"¹³:

...The widespread use of the new technology and the associated delays have therefore changed the feasibility of the ready train concept, which remains a challenge. Nonetheless, the Company has remained as committed as possible given the current industry requirements, to the ready train concept.

17. CN noted that one of the resulting benefits, however, is that longer and slower trains help reduce greenhouse gas emissions.

18. CN disagreed with the TCRC's long time suggestion that reintroducing "herders", who once assembled trains, would decrease ITD. CN noted that part of the challenge came from the Winnipeg yard's departure tracks lacking sufficient length to house a long train without blocking other non-departure tracks and disrupting yard operations. CN argued therefore that longer trains required an adjustment of the PER's "ready train concept"¹⁴.

19. CN referred to its significant capital investments of roughly \$100 million for the Sprague Subdivision, including for new sidings and track extensions. Nonetheless, the Winnipeg yard still had capacity issues due to a lack of expansion space. The cost of using herders, which would have cost far less than the infrastructure changes it implemented, would not, in CN's view, have resolved the failure rate.

20. CN argued that the high "failure rate" resulted not from ITD but rather from train run times. The ITD in Winnipeg of 2 hours and 10 minutes was higher than the accepted standard of 1 hour and 40 minutes in *AH523*, but reflected the significant changes in traffic volumes, train lengths and trains speeds. CN also submitted that it had prioritized

¹³ E-1, paragraph 68

¹⁴ E-1, paragraph 70

trains on the Sprague Subdivision over other movements¹⁵, a point the TCRC disputed¹⁶.

21. CN suggested that run times for the Sprague Subdivision had increased from roughly 4 hours to 6 hours since *AH523*. This occurred despite its capital investments, including working with U.S. authorities to speed up passage through the Ranier point of entry. Combined with ITD and FTD, the Sprague Subdivision run could now only be completed within 10 hours in optimum operating conditions. That performance level rarely occurred due to congestion, engine failure, speed restrictions and weather.

22. CN argued it fully respected the PER's 9 Principles. For example, it noted that it "operates the Sprague Extended Run as a hook and haul operation to the extent possible given the current operational reality"¹⁷. Similarly, it argued that the PER clearly contemplated changes in the operating environment¹⁸:

Strict and absolute adherence to "ready train concept" for extended runs is not required nor contemplated by the above principles. The Company has reasonably operated with the least possible exceptions given the changes to the operating environment. Both parties contemplated potential changes to the operating environment when negotiating the Extended Run Principles (as demonstrated by the language in Articles 28, 35 and Addendums 65 and 79).

23. In sum, CN argued that its many efforts satisfied the PER, and this prevented the TCRC from refusing to consent to an increase in hours.

TCRC

24. The TCRC argued that CN had caused the increase in ITD and FTD, as well as the increased transit time.

25. The TCRC suggested that the failure to respect the PER's "ready train" concept in Winnipeg had led to an increase in ITD. The additional work required of extended run crews in Winnipeg was at odds with the PER's "hook and haul" emphasis. Similarly, the

¹⁵ E-1, paragraph 81

¹⁶ U-1, paragraph 110

¹⁷ E-1, paragraph 102

¹⁸ E-1, paragraph 106

TCRC pointed to a lack of assigned yard crews which would help expedite the departure of ER trains.

26. The TCRC also highlighted that CN's statistics did not include data for train crews which were cancelled after starting work on an extended run train. A different crew would later do the run. CN's exclusion of this data had artificially lowered the true ITD numbers.

27. How could CN respect the "ready train" concept?

28. The TCRC suggested several courses of action, including¹⁹:

a) Providing priority at Winnipeg Symington Yard for extended run traffic on the Sprague Subdivision corridor, over the hump yard and other yard movements

b) Power on trains at the outset of the tour of duty, air tested and set to depart

c) Use of yard crews to assemble and yard trains

d) All Federal Railway Administration inspections completed prior to call time

e) Trading off Southbound crews at Rainier Station instead of crews pulling past the outbound DWP American crews and waiting for transportation back to the station.

f) Ensuring that all conductors are CLO qualified as per bullet #7 so that Locomotive Engineers have an opportunity to eat and have an ergonomic break

g) Ensuring that all bad orders have been removed from trains before call time as per bullet 6 of the Extended Run the Principles.

h) Deploying rescue service where necessary to assist in reducing rest violations before they occur.

i) The use of yard assignments to provide rescue and yarding tasks as well as to build trains for train ready departure

¹⁹ U-1, paragraph 169

29. In 2014, the parties had negotiated a local agreement for Conductor Only Herder Assignments to address ITD, but its implementation apparently lasted only a few months²⁰.

30. The TCRC also argued that CN had contributed to the longer run times. CN had adopted technology to enhance fuel efficiency and imposed throttle restrictions for trains without that technology²¹. Both items caused slower train speeds. This impacted CN's ability to comply with the PER's obligation to reduce run times. CN's Rail Traffic Controllers retained the discretion to modify throttle restrictions to increase train speed²².

31. The TCRC referred as well to Addendum 81 involving violations of the enroute rest provisions, *supra*. It argued that its members do not want the additional mileage payments. They had hoped that the extra costs for Sprague Subdivision crews working up to the 12-hour legal maximum would persuade CN to take the steps needed to relieve crews at 10 hours of work. Instead, the TCRC suggested that CN's own data demonstrated it had paid over \$11 million in penalty payments under Addendum 81²³.

32. The TCRC noted that if the arbitrator granted the requested change in hours under the PER for the Sprague Subdivision, then its members would still do the same work, but CN would save close to \$9 million²⁴.

33. In sum, the TCRC concluded that CN's failure to respect the PER justified its continued refusal to consent to an increase in the hours.

ANALYSIS AND DECISION

Introduction

34. As noted above, CN did not convince the arbitrator that the TCRC had unreasonably withheld its consent for an extension of hours on the Sprague Subdivision.

²⁰ U-1, paragraphs 78-80 and U-2, Tab 19

²¹ U-1, paragraph 109

²² U-3, Tab 60, pages 0756-0757

²³ U-1, paragraph 99

²⁴ U-1, paragraph 99 and 172

35. The PER does not give the TCRC a veto over any changes²⁵. Neither does an arbitrator have to endorse any suggested solutions. Arbitrator Picher noted that many factors go into the analysis of the PER's negotiated regime, including the commitment to the ready train concept and the priority CN gives to ER trains:

On the whole the evidence appears to confirm that over the years the Company has effectively reduced its commitment to the ready train concept and the priority to be given to extended run trains operating between Winnipeg and Fort Frances. That is not to say that the Arbitrator necessarily endorses the view of the Unions to the effect that the problem could only be corrected by the reassignment of herders. Nor is it necessary to find that the high failure rate of extended run trains between Winnipeg and Fort Frances is necessarily the result of the Company's decision to reduce the complement of employees in the running trades or the car department...²⁶.

36. Similarly, while the parties do not dispute that there are congestion issues at Fort Francis/Ranier, this award does not necessarily endorse the TCRC's many suggestions, including, for example, those involving major expansions to railway yards and a bridge²⁷.

37. But, to meet its burden, CN does need to focus on the PER. CN needed to satisfy the arbitrator that it has respected the ready train concept in the PER. Similarly, CN needed to explain its specific efforts to address ITD and FTD.

The appropriate analysis

38. This case is not about the most efficient way to run a railroad.

39. CN, as a highly successful railway, knows how to run its business. CN, like other successful operations, continuously strives to improve efficiencies and adapt to client needs and demands.

40. Law firms and labour arbitrators are no strangers to these concepts though evidently on a smaller scale. The quick adoption of videoconference labour arbitration

²⁵ [CROA 3325](#)

²⁶ U-2, page 0089

²⁷ U-1, paragraph 158

hearings due to the pandemic is just the latest example of how other entities adapt to serve clients.

41. But the need to adapt and improve efficiency remains subject to employment and labour legislation and, for the specific purposes of this case, the parties' collective agreements. Those agreements balance efficiency and other metrics with the essential employment bargain the TCRC has negotiated on behalf of its members.

42. In this case, the arbitrator's focus is not on how best to run a railway, a subject which would clearly fall outside any presumed expertise. Instead, the arbitrator must examine the parties' binding legal agreement contained in the PER. Evidently, the greater that CN can demonstrate compliance with the PER, the higher the likelihood an arbitrator would find any TCRC refusal to consent unreasonable.

43. The TCRC does not have a blanket objection to all PER changes. For example, the parties successfully negotiated an extension of hours for a different subdivision in August 2013, without any need for arbitration²⁸. The parties have also attempted to arrive at local agreements to address ITD and FTD²⁹. But, before giving its consent, the TCRC does insist on the benefit of the bargain which accrued to it under the PER.

44. Arbitrator Picher has already provided some helpful comments regarding the application of the PER, evidently for the specific situation in 2002-2003.

AH523

45. In *AH523*, several reasons persuaded Arbitrator Picher not to find the unions unreasonable in withholding their consent. While both parties had agreed that 1 hour and 40 minutes would be a reasonable ITD³⁰, he nonetheless concluded that CN had not lived up to its agreement to respect the "ready train concept"³¹:

A further cause for concern in relation to the case presented on behalf of the Company is evidence before the Arbitrator supporting the arguments of the Unions that the Company has not lived up to the original undertaking made with respect to the ready train concept as an essential component of successful

²⁸ U-2, Tab 16

²⁹ U-2, Tab 19 and U-3, Tab 43

³⁰ U-2, page 0082

³¹ Principle #5

extended run operations. In fact, the arguments presently put forward by the Company concerning the concept of ready trains appear to be substantially at variance with what was presented to the Unions at the time of the original ratification of the extended run agreements³².

46. Arbitrator Picher agreed with CN that the Principles were not rules. But he disagreed with CN's suggested interpretation of Principle #5 regarding the road crew's obligation to prepare the train. That crew may be called upon to do some preparatory work, but not if that work jeopardized their ability to complete the route on time:

The Company's representatives submit that the foregoing language recognizes that it is the obligation of the road crew to perform the preparatory items listed within paragraph 5, such as coupling locomotives to their train, performing a full brake test and coupling the train itself. The Arbitrator cannot agree that the language of paragraph 5 was intended to describe an additional burden to be placed upon the outbound crew. **On the contrary, in my opinion, what the paragraph clearly indicates is that "trains will be ready for the outbound crew ..." in the sense that such preparatory tasks as transferring locomotive power to the train, coupling the train and performing brake tests is normally already done when they arrive at their crew ordering time for an extended run train. That reading, it would seem, is also more consistent with the thrust of paragraph 6 of the principles of extended runs which states, in part: "Extended run trains will normally operate as hook and haul, ...".**

These observations are not to suggest that road crews should invariably expect to find their train fully prepared and ready to depart at their on-duty time. The Arbitrator agrees with counsel for the Company that principles are different from rules. What the extended run principles establish is that the ready train concept should be respected to the extent that it must be to get a road crew to their destination within their extended run time standard. **The principles are obviously not offended if the road crew is required to perform preparatory work at the initial terminal, including the tasks cited in paragraph 5, when they can do so without jeopardizing their ability to get over the road within the normal limits of their extended run time**³³.

(Emphasis added)

³² U-2, page 0087

³³ U-2, page 0088

47. Arbitrator Picher again emphasized that preparatory time should be minimized to allow employees to depart with their train with enough time to complete their run as scheduled:

However, the general thrust of the principles of extended runs, read in a manner consistent with the implementation plans disseminated by the Company at the time the original extended run agreements were made, particularly as relates to the ready train concept, lead, on the balance of probabilities, to the conclusion that **the parties did originally intend that road crews in extended run operations should generally expect to find their train to be in an advanced state of readiness when they arrive to work at their ordering time, to the extent that that is necessary to the timely completion of their extended run. Consistent with the principles of extended runs they should also expect that delays at the initial terminal will be minimized and that other work being conducted in the departure yard will be organized in such a way as to give a degree of priority to the extended run train³⁴.**

(Emphasis added)

48. Arbitrator Picher dismissed the grievance but noted that CN changes to the management of its operations could lead to a different result in the future, though this might require staffing increases:

...It may well be that the Company might, by adjustments in the management of operations, achieve a satisfactory degree of adherence to the ready train concept, bringing itself within the principles of extended runs, even allowing for the introduction of longer trains since the original extended runs agreements, so as to reduce the unacceptably high failure rate encountered in the operation of extended runs between Winnipeg and Fort Frances. On the other hand, experience may come to demonstrate that the Company may not be able to meet its contractual obligation to respect the principles of extended runs, including the ready train concept, without making certain manpower adjustments.

...

As the party seeking relief, it is incumbent upon the Company to establish that strict adherence to the principles of extended runs as found within the collective agreements has nevertheless resulted in an unacceptable failure rate on the territory in question. Very simply, that is not demonstrated on the evidence before the Arbitrator in the case at hand. **The Company has**

³⁴ U-2, pages 0088-0089

not demonstrated, on the balance of probabilities, sufficient understanding of and adherence to the ready train concept that is an essential part of the original bargain between the parties concerning extended run operations. Nor does the evidence confirm to the satisfaction of the Arbitrator that local operations in Symington Yard have been managed in such a fashion as to give sufficient priority to extended run trains, as compared for example with hump operations in the east end of Symington Yard. Needless to say, if the Company could show a sustained period of adherence to the principles of extended runs as originally agreed between the parties, coupled with sustained diligence in the management of traffic within Symington Yard, without substantially reducing the failure rate of extended run trains between Winnipeg and Fort Frances, the result would be substantially different and might well justify a change. A more successful application by the Company in the future might also contain evidence of more efficient practices in respect of the calling of crews ordered at Fort Frances/ Ranier³⁵.

(Emphasis added)

49. Evidently, the conclusions in this Award must come from the facts as presented at the hearing. But the arbitrator agrees with Arbitrator Picher's observations about how to apply the PER, including the importance of "strict adherence" to the 9 Principles to which the parties agreed.

Key principles

50. The PER assists both CN and the TCRC given its stated goal "to protect employees and avoid restrictive work rules...". While the 9 principles speak for themselves, the arbitrator will highlight a few which are essential to the appropriate analysis.

51. Principle #2 states: "Will enhance transit time, reduce initial and final terminal time and improve customer service reliability". This Principle sets out 4 interrelated items which benefit both the TCRC and CN:

1. Enhance transit time;
2. Reduce initial terminal time;
3. Reduce final terminal time;

³⁵ U-2, pages 0089-0090

4. Improve customer service reliability

52. Under Principle #2, the parties agreed that the road crew would perform some work at the initial and final terminal. The essential evidence for the PER's interpretation concerns what efforts which were made to address the explicit terms "enhance", "reduce and "improve".

53. Principle #5 focuses on reducing terminal time for the crews:

At the crew ordering time extended run trains will be ready for the outbound crew to commence their duties which vary by terminal:

- i.e.: power on train, brake test completed, train coupled, etc.

54. The arbitrator agrees with Arbitrator Picher's implicit observation, *supra*, that, to the extent this Principle appears ambiguous regarding the work the crew must perform before leaving, it must be interpreted consistently with the "hook and haul" concept to which the parties agreed in Principle #6:

Extended run trains will normally operate as hook and haul, however will perform customer services when other train service is not practicable i.e.:

- pick up a bad order
- set out or pick up
- provisions of conductor only agreement will apply

55. While the "hook and haul" concept is clearly not absolute, the parties adopted it as the accepted norm for the PER.

56. The parties also agreed on the need to track adherence to the PER:

It was agreed for these principles to be used, a set of measures and standards needed to be developed which tracked adherence to these principles. The measurement would be provided to the union and the company at regular

intervals (monthly) and jointly reviewed on a regular basis. Both parties are committed to action when unacceptable deviation occurs.

57. The PER noted that those tracking efforts needed to be shared with the TCRC to allow it, in part, to make an informed decision on whether to consent to a requested change in hours.

58. That same information would also assist any arbitrator called upon to resolve this type of grievance. At the hearing CN did not appear to dispute the TCRC's suggestion that this "adherence tracking" process was not taking place. This does not mean, however, that CN has not provided statistical information for the Sprague Subdivision run both under the PER and for the purposes of this arbitration.

59. The parties further agreed to have the "least possible exceptions" to the PER agreement:

The overriding objective of the foregoing is to have extended runs function consistent with the least possible exceptions against the principles we have established.

60. The PER provides the analytical backdrop against which the arbitrator must decide whether the TCRC has withheld its consent unreasonably.

An extended run train differs from a "regular" train

61. A "regular" train³⁶ run involves a single subdivision. The crew is expected to perform work at the initial terminal, on the run and at the destination terminal.

62. In the PER, however, the parties agreed to treat an ER train differently. The PER highlights these differences in several ways, including by noting that the train "will be ready for the outbound crew to commence their duties" (Principle #5) and, for greater clarity, that the train will normally operate as a "hook and haul" (Principle #6). Arbitrator Picher characterized this as the "ready train concept".

³⁶ This is not to suggest there are just "regular" trains and ER trains. For example, some trains, such as those carrying dangerous goods, are subject to special speed restrictions: [CROA 4626](#).

63. Why does this distinction between “regular” trains and ER trains matter?

64. CN’s suggested “failure rate” focused on ER trains not completing their runs within 10 hours, i.e. TTOD³⁷. That test may be appropriate to analyze the performance of regular non-ER trains. But the arbitrator has difficulty accepting this “test” as the applicable one for the purposes of the PER.

65. The PER does not refer solely to the length of time it takes to complete a run. Instead, it places certain contractual obligations on CN for ER trains. Only after CN has demonstrated compliance with the PER can one then determine the failure rate.

66. In other words, evidence regarding adherence to the PER is a necessary precondition to the proper understanding of a “failure”. These negotiated preconditions create a type of check and balance system to address any TCRC concern that CN might otherwise control unilaterally the application of the PER through its own operational decisions.

67. Accordingly, the arbitrator must examine ITD, run time and FTD when determining whether CN has complied with its PER obligations.

Initial Terminal Delay (ITD)

68. In *AH523*, Arbitrator Picher noted that the parties accepted a time of 1 hour and 40 minutes as an acceptable standard for crews before they left on an extended run. In other words, crews do not show up one minute and then leave on the run the next, even under the PER’s “hook and haul” model.

69. CN’s statistical evidence showed that ITD now exceeded the 1 hour and 40-minute standard contained in *AH523*³⁸. CN asked the arbitrator to consider the significant changes in the industry over the last 25 years when considering this increase to the ITD. It suggested that the “ready train” concept from *AH523* had to change as a result³⁹.

³⁷ In *AH523*, the failure rate had focused on when CN had to recrew an ER train prior to the destination terminal: U-1, paragraph 93.

³⁸ E-2, Tabs 17 and 18 (CN amended the heading titles orally at the hearing due to a couple of typos)

³⁹ E-1, paragraph 68

70. There is no doubt the industry has changed over the last 25 years. Trains are longer. This can have an impact on the preparation of an extended run train. The Symington yard in Winnipeg presents additional challenges due to a lack of expansion space. CN has clearly made some significant capital investments to improve the situation. In addition, it has apparently also used hostlers at Symington Yard to address the “ready train” requirement⁴⁰.

71. But CN did not satisfy the arbitrator that the industry changes and challenges implicitly provided an exemption from applying the “ready train” concept for extended runs as originally negotiated. The PER, as drafted, remains in force. CN may consider the PER’s terms anachronistic, but that is an issue for the bargaining table. A rights arbitrator has no authority to change the parties’ original agreement. An arbitrator can only interpret and apply it.

72. Beyond its admittedly significant capital expenditures, CN did not demonstrate what steps it had taken to reduce ITD for the ER trains. This should not be interpreted as a criticism. CN is far better placed than any arbitrator to make the operational decisions it feels are best overall for the Winnipeg yard.

73. Thus, CN may consider that using the longer 12,000-foot tracks to which the TCRC referred⁴¹ to assemble the ER trains makes no operational sense⁴². But those same decisions may impact whether CN can demonstrate it has met its PER obligations.

74. CN did not show what steps it took to build ER trains to lessen the time the road crew had to spend in the yard. It was also not clear from the evidence the extent to which CN had given priority to ER trains; a subject Arbitrator Picher also examined in *AH523*. Priority appears to be given to ER trains leaving Winnipeg⁴³ though the evidence was disputed about Hump priority⁴⁴.

75. The arbitrator does not dispute that longer trains, and new innovations like distributed power, have lengthened the process of building a train. But those changes

⁴⁰ E-2, Tabs 5 and 6 (District Committee meeting discussions). See also the TCRC’s summary of another District Committee meeting: U-2, Tab 21.

⁴¹ U-3 Tab 54

⁴² E-1, paragraph 69

⁴³ E-1, paragraph 81

⁴⁴ U-2, Tab 22 and E-2, Tab 5

have not diluted the PER's principles. Rather, CN needs to address those changes while also respecting the "ready train" concept. The fact that an original crew may work for a significant time on a train, but then be cancelled to allow a different crew to take over the run, seems to demonstrate that CN could reduce ITD.

76. But there may be other legitimate operational priorities which militate against implementing these steps.

77. CN does not have to try every suggestion the TCRC makes to demonstrate substantial compliance with the PER. But it still must show what specific efforts it made to reduce ITD. CN's evidence did not satisfy this obligation.

Run Time

78. The arbitrator accepts that the run times may have increased for the Sprague Subdivision, despite CN's considerable capital investments⁴⁵.

79. However, some of the run time increases appear attributable to CN's own legitimate operational decisions. For example, fuel efficiency technology and throttle restriction policies provide many benefits, including reduced operating costs and emissions. But CN can grant permission to a crew to increase its speed. The evidence did not suggest that CN permitted ER trains to increase speed to "enhance transit time" for the purposes of the PER.

80. Similarly, the parties' submissions contested whether CN prioritized ER trains. CN suggested it did in Winnipeg⁴⁶, but the TCRC contested this fact⁴⁷ and added at the hearing that crews sometimes would have to wait in a siding for extended periods. Just as with the issue of throttle restriction, the arbitrator did not find in the record sufficient evidence demonstrating that CN prioritized ER trains to address these delays.

Final Terminal Delay (FTD)

81. CN also did not satisfy the arbitrator about what operational decisions it was taking to "reduce final terminal time" as set out in Principle #2. Did CN treat an ER train like any other, or were certain special measures being followed to comply with the PER?

⁴⁵ E-1, paragraphs 87-91

⁴⁶ E-1, paragraph 81

⁴⁷ U-1, paragraph 110

82. Certainly, the significant payments under Addendum 81 might suggest that CN preferred to have certain ER crews do all the required work at the final terminal up to the 12-hour legal threshold. CN has control over that work and whether to incur that extra mileage payment. While the collective agreement authorizes this practice, this extended work may hinder efforts to respect the PER's obligation to "reduce final terminal time".

83. Not surprisingly, the TCRC members did not want to continue to do this work but lose the associated penalty pay for enroute rest violations, a benefit for which they bargained in Addendum 81.

Conclusion

84. Since CN filed the grievance, it had the burden of proof to demonstrate that, despite its adherence to the PER, the originally negotiated time of 10 hours no longer sufficed. If CN demonstrated PER compliance, then an increase in the hours might well follow, despite the TCRC's refusal to consent. Arbitrator Picher made this same point, as noted above in the extracts from *AH523*.

85. In this case, however, CN focused on TTOD, which is not surprising for a railway which constantly makes decisions to operate in the most efficient way possible. But an arbitrator must focus not just on overall time, which remains part of the equation, but also on the parties' negotiated PER.

86. The arbitrator set out several reasons in this award why CN did not meet its burden. A major reason remains the same as that of Arbitrator Picher in 2003. CN did not demonstrate that it has followed the "hook and haul" regime the PER mandates. Rather, it seemed to argue that the PER regime, including the ready train concept, should change given the evolution of the railway industry.

87. Such a change must come from collective bargaining rather than from an arbitrator.

88. CN did not persuade the arbitrator that it fulfilled its obligations under the PER at the initial terminal, during the run and/or at the final terminal. The evidence did not show that CN focused sufficiently on ER trains to comply with the "ready train concept". The arbitrator also did not get a sense of any significant priority being given to ER trains.

89. There may be well be valid operational reasons for not doing so. But that is not the question for the arbitrator to decide given the contractual language the parties have adopted.

DISPOSITION

90. For the reasons set out above, the arbitrator concludes that the TCRC did not unreasonably refuse to consent to an increase in hours.

91. The arbitrator dismisses the grievance.

SIGNED at Ottawa this 1st day of September 2020



Graham J. Clarke
Arbitrator

Appendix 1: Article 35.10(b) (CBA 4.3)

Extended Runs - Territory

(b) In the application of Article 35.10 crews operating in an extended run territory will have the right to book rest as follows:

Winnipeg	-	Sioux Lookout	11 Hours
Vancouver	-	Kamloops	12 Hours
Kamloops	-	Jasper	12 Hours
Jasper	-	Edmonton	12 Hours
Edmonton	-	Biggar	12 Hours
Biggar	-	Melville	12 Hours
Melville	-	Winnipeg	12 Hours
Jasper	-	Prince George	12 Hours
Smithers	-	Prince George	12 Hours
Edmonton	-	North Battleford	12 Hours
Calgary	-	Kindersley	12 Hours
Edmonton	-	Ram River	12 Hours
Winnipeg	-	Fort Frances	10 hours
Fort Frances	-	Thunder Bay	11 hours
Edmonton	-	Calgary	10 hours
Smithers	-	Ridley Island & Prince Rupert	10 hours ⁴⁸

Note: The hours on runs identified in this article may be increased, to a maximum of 12 hours, or decreased based on the principles set out in Appendix 65 of this Memorandum.

⁴⁸ In 2013, the parties agreed to increase the hours from 10 to 11: U-2; Tab 16

Appendix 2: Addendum No. 65 (Extended Runs; May 5, 1995; CBA 4.3)

Gentlemen:

During the mediation / arbitration process conducted by Mr. Justice Adams at Toronto in April and May 1995, which culminated in a mediated settlement on implementation of extended runs in Western Canada, a process for implementation and ongoing monitoring was established.

It was decided in order to protect employees and avoid restrictive work rules that a set of principles would be used to guide implementation and ongoing operation of extended runs. These principles are as follows:

Principles of Extended Runs

1. Will not reduce the level of safety.
2. Will enhance transit time, reduce initial and final terminal time and improve customer service reliability.
3. Employees will be provided accurate line-ups to allow sufficient rest prior to starting an extended run.
4. Employees will arrange to report for duty prepared to complete the assignment for which called.
5. At the crew ordering time extended run trains will be ready for the outbound crew to commence their duties which vary by terminal:
 - i.e.: power on train, brake test completed, train coupled, etc.
6. Extended run trains will normally operate as hook and haul, however will perform customer services when other train service is not practicable i.e.:
 - pick up a bad order
 - set out or pick up
 - provisions of conductor only agreement will apply
7. Conductors must be qualified to operate a locomotive when accompanied by a Locomotive Engineer.
8. Cab conditions of locomotives will be improved within defined time frames to provide a more suitable ergonomic environment.
9. Marshalling and customer service activity in extended run territory to be primarily performed by road switchers and wayfreights that will not be operated as extended runs.

It was agreed for these principles to be used, a set of measures and standards needed to be developed which tracked adherence to these principles. The measurement would be provided to the union and the company at regular intervals (monthly) and jointly reviewed on a regular basis. Both parties are committed to action when unacceptable deviation occurs.

The parties agreed to the following committee structure for implementation and ongoing monitoring of extended runs:

Regional Steering Committee - Permanent

Consisting of:

- 2 CCROU General Chairmen
- 2 Senior Company Officers such as the Senior Director Transportation Services and 1 District Manager.

Frequency:

- Must meet or conference call quarterly or more frequently if performance dictates.

Mandate:

- Review standards/measures
- Ensure acceptable performance
- Resolve performance issues.

Regional Implementation Committee - Temporary

Consisting of:

- 2 appointees by the CCROU General Chairmen - Mountain Region
- 2 appointees by the CCROU General Chairmen - Prairie Region
- 2 Senior Company Officers

Frequency:

- Full time until extended runs are implemented.

Mandate:

- Determine standards and measures
- Establish detailed implementation plans for Western Canada including points covered in Attachment A.

District Committee - Permanent

Consisting of:

- 2 appointees by the CCROU General Chairmen
- The District Superintendent Transportation
- One other Company committee appointee.

Frequency:

- Must meet or conference call quarterly or more frequently if performance dictates.

Mandate:

- Review district measures and standards
- Ensure acceptable performance
- Resolve performance issues
- Elevate to regional level performance issues that can not be resolved at a District level.

Extended run standards and measures will be distributed regularly to all employees involved with extended runs. Standards will be adjusted jointly on a needs basis (i.e., as cab conditions improve higher level of standard established, amount of on line work increased, not to exceed conductor only criteria, due to bona fide service plan need).

Prompt implementation would be jointly coordinated within defined time frames as defined in Attachment B.

Prior to the implementation, the parties agree that each affected terminal will be visited to explain extended runs to employees.

It is agreed that the appropriate Local Chairpersons will be assembled on each Region to explain the introduction of extended runs.

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.

Crew sequencing and booking rest en route standards will be adjusted from time to time in keeping with extended run principles through the agreement of the Regional Steering Committee.

For the purposes of payment these committee meetings will be considered company initiated.

The overriding objective of the foregoing is to have extended runs function consistent with the least possible exceptions against the principles we have established.

If the aforementioned accurately reflects the parties conversation, please sign where indicated.

(Sgd) K.L. Heller
Chief of Transportation

(sgd) W.A. Wright
General Chairman

I Concur:
(sgd) J.W. Armstrong
General Chairperson