

**British Columbia Rail v. Canadian Union of  
Transportation  
Employees, Local 1**

IN THE MATTER OF An Expedited Arbitration  
Between  
BC Rail (hereinafter referred to as the "Railway"), and  
Canadian Union of Transportation Employees, Local 1 (CUTE 1)  
and United Transportation Union, Locals 1778 and 1923 (UTU)  
(hereinafter referred to as the "Unions")

[2000] B.C.C.A.A.A. No. 114  
Award no. X-035/00

**British Columbia  
Collective Agreement Arbitration  
H.A. Hope, Q.C., Arbitrator**

Heard: (Vancouver, B.C.) March 28, 2000.  
Award: March 29, 2000.  
(10 paras.)

(VC Freight Arbitration)

**Appearances:**

Bruce Greyell, for the Employer.  
Theodore Arsenault, for the Union.

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EXPEDITED AWARD

PRELIMINARY DECISION

(1) The Issue

¶ 1 On March 10, 2000 the Unions applied for an interim order in the following terms:

The Running Trades Sector Unions respectfully seek an interim Order:

(1) prohibiting BC Rail Ltd. from abolishing the jobs in dispute pursuant

to the grievances, and moving the said jobs to Squamish; and

- (2) altering the status quo of the jobs in dispute pursuant to the grievances, pending the final adjudication of the grievances.

¶ 2 The application is retrospective in the sense that it relates to actions taken by the Railway on February 14, 2000. In particular, the Railway "moved the VC's home terminal [from North Vancouver] to Squamish". The VC freight trains were operated as an unassigned service out of North Vancouver and were manned by unassigned crews. To accommodate the move, the Railway created positions in Squamish that were "bulletined and filled". Those changes by the Railway led to the filing of a grievance by CUTE 1 on February 15, 2000 and by the UTU on February 17, 2000. Those grievances will be heard together on March 31, 2000.

¶ 3 In these proceedings the Unions advised that they were not seeking to have the jobs returned to North Vancouver in literal terms. In this preliminary application and in the hearing on the merits the Unions propose that the Railway call the VC trains for North Vancouver but that they operate to and from Squamish with the Railway transporting crews from North Vancouver to Squamish and return. That is, if the Unions succeed in the grievance, the Railway will not be required to return the VC Trains to North Vancouver. They can continue to operate from Squamish during the acting out of the material change process.

¶ 4 The Unions, in effect, sought an interim order in which the Railway is required to maintain the status quo of the jobs by returning them to North Vancouver, but without the necessity of returning the trains. In making that application the Union accepted that it must meet the criteria defined by the Labour Relations Board in *White Spot Ltd. and CAW*, (1994) 23 C.L.R.B.R. (2d) 255 (Hall). On p. 265 the Board wrote:

1. An adequate remedy would not be available to the applicant upon conclusion of the hearing into the merits of the case without an interim order.
2. The claim must not be frivolous or vexatious and must usually be based on a prima facie case.
3. An interim order must not penalize the respondent in a manner which will prevent redress if the application fails on the merits.
4. An interim order must be consistent with the purposes and objects of the Code.

¶ 5 In terms of meeting a prima facie case, the Unions urged that the facts clearly disclose that in moving the trains, the Railway eliminated the positions in North Vancouver of the crews who had manned them. That change, said the Union, amounted to a "material change in working conditions which [did] have materially adverse effects"

on the senior engineers in North Vancouver who worked positions on the VC freight trains.

¶ 6 The position of the Railway was that the change relating to the VC trains did not fall within the description of a material change and, in any event, it was excused on the basis of the following language appearing in the collective agreements:

This Article does not apply in respect of changes brought about by the normal application of the Collective Agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional re-assignment of work or other normal changes inherent in the nature of the work in which employees are engaged.

¶ 7 The "change", said the Railway, was a "normal change inherent in the nature of the work". Its further position was that the Union had failed to establish that the order was necessary to provide the Unions with an adequate remedy in the sense required in the White Spot criteria. The issue, said the Railway, was the payment of the costs of transporting crews from North Vancouver to Squamish and return. That cost, said the Railway, could be readily compensated in the form of damages and thus provide an "adequate remedy" in the event the Unions succeed in their grievances.

#### Decision

¶ 8 I am of the view that the Unions met the second criterion in the White Spot test, being the establishment prima facie that the change at issue, to paraphrase the language of the collective agreements, amounted to "a material change in working conditions which will have materially adverse effects" on the crews displaced by the move. The question of what constitutes a change falling within the language has been addressed in numerous authorities including a significant body of authority that has evolved under the Canadian Railway Office of Arbitration (CROA). The question of what type of change falls within the language was first addressed by Arbitrator Weatherill in CROA Case No. 221 where he wrote:

In the context of Article 47, it must be said that a material change is one which leads to situations for which the procedures of that Article are properly invoked. It is apparent at a glance that Article 47 contemplates some substantial dislocation of employees with respect to their work, as to time, place, or fundamental character. (emphasis added)

¶ 9 Applying that reasoning to the facts asserted in these proceedings, the "change" resulted in crews in North Vancouver losing access to the VC trains, thus requiring them to forego those assignments or travel from North Vancouver to Squamish to claim the posted positions. The CROA authorities make it clear that the material change language is to be applied to affected employees on an individual basis. The North Vancouver crews were displaced by the change. That impact, at least prima facie, appears to fall

within the scope of that language. Subject to further evidence and argument in the proceedings on the merits, my view is that the essential question raised by the grievances is reduced to one of whether the exception provision applies.

¶ 10 However, I am of the view that addressing that question can be postponed to the hearing on the merits. That is because I agree with the Railway that the Unions failed to meet the first criterion established in the White Spot test. In particular, the cost of travelling to Squamish and return can be readily compensated in damages. The lifestyle issues raised by the Unions do not apply. The granting of an interim order would not affect that aspect of the change. The employees who are travelling to Squamish would continue to travel regardless of the order. In the result, the application for an interim order is dismissed. In dismissing the application, it is advisable to caution that any findings made in these proceedings are made for the restricted purpose of disposing of the application. The parties are not bound by those findings in dealing with the grievances on their merits. The proceedings will resume on March 31, 2000 at 9 a.m.