CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4574

Heard in Montreal, September 11, 2017

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Violation of the Collective Agreement, the *Canada Industrial Relations Board* certificates certifying the Union as the bargaining agent for all running trades employees, NJ integration Agreement and 304 Pool Local Agreement and historical practice, by reassigning TCRC bargaining unit work to non-bargaining unit employees on the Lacolle subdivision.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Since the integration of the NJR in 1993, the Quebec Division employees have been responsible for the making up and delivering of trains to and from Rouses Point, NY. A local agreement was put in place to assure service under the Conductor Only Agreement due to the fact that the Quebec Division is not Conductor Only Territory. Commencing on or about December, 2013 the Union became aware that non-bargaining unit crews from the United States were performing their bargaining unit work. Specifically, the Union became aware that U.S. crews were operating assignments, including switching and lifting cars, on the Lacolle Subdivision.

The above work has always been the role and the responsibility of the Union's bargaining unit and membership. This work was arbitrarily removed from the Union's membership and given to non-bargaining unit employees on or about 2013 and has continued. US Crews are now used out of the Hotel in Montreal (their away from home terminal [AFHT]) and/or requested to tie down their train to re-crew a train heading for Montreal which is work of the Home Terminal Crews Montreal.

The Company arbitrarily reduced the number of turns into the above noted pool (to 1 crew) due to the utilization of US based (non-bargaining unit members) crews. This was done gradually

and arbitrarily while the Union's members were forced to familiarize US crews with the work, territory, etc.

This was done despite objection from the Union's Local Officers and membership. The Company continues to utilize American based crews with the result that the Pool has been reduced to only one Canadian based crew from the Union's membership.

The Union submits that based on the NJR Agreement, the 304 Pool Agreement, past practice and the terms of the Collective Agreement, the work in question belongs to the Union's bargaining unit and that the work ought to be ordered and returned to the Union's bargaining unit and membership.

The Union filed a Step 2 grievance on July 11, 2014 and submitted the grievance to Step 3 on October 27, 2014. The Company declined the grievance on both occasions.

The Union maintains that the Company has violated all of the above noted agreements including the collective agreement. The Union requests that the Arbitrator:

- Finds that the Company has violated the above noted Agreements and Collective Agreement;
- Order the Company to cease and desist from said violations;
- Order the Company from allowing non-bargaining unit employees from performing the TCRC bargaining unit work in question;
- Order the Company to cease and desist from any future violations of the Collective Agreements;
- Order that all work previously done by Assignment 304 be returned to the bargaining unit and membership; and that the membership be made whole for all lost earnings with interest; and
- Order such other relief as the Union may request.

The Company disagrees and denies the Union's requests.

FOR THE UNION: **FOR THE COMPANY:**

(SGD.) B. Hiller and **B. Brunet** **(SGD.)**

General Chairpersons

There appeared on behalf of the Company:

N. Hasham	– Counsel, Toronto
D. Pezzaniti	– Manager, Labour Relations, Calgary
J. Wilkerson	– General Manager Eastern Operations, Toronto
D. Braun	– Assistant Superintendant, Montreal
A. Pompizzi	– Train Master, Montreal
J. Blotsky	– Former Operation Centre Director, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Campbell	– General Chairperson, Ottawa
D. Psichogios	– Vice General Chairperson, Montreal
W. Apsey	– General Chairman, Smiths Falls
C. Yardel	– Vice General Chairperson, Montreal

AWARD OF THE ARBITRATOR

INTRODUCTION AND PRELIMINARY MATTERS.

The parties' dispute involves four (4) grievances, two of which I am seized of, and two distinct collective agreements:

> 1. Collective Agreement between CP and TCRC on behalf of Locomotive Engineers, Thunder Bay and East ("LE-East").
> 2. Collective Agreement between CP and TCRC on behalf of Conductors, Trainmen and Yardmen, Thunder Bay and East ("CTY-East").

Although there are two (2) grievances, two (2) crafts and two (2) collective agreements (collectively the "TCRC Collective Agreements") involved in this case, the Union and/or the Company decided to present their case in a common format and so will the undersigned.

The Union's exparte statement of issue concerning the second grievance is reproduced in the Annex A, as well as the Company's *exparte* statement of issue that was filed beyond the arbitration's procedure deadline.

BACKGROUND FACTS

Before addressing the merits of the grievances, it is important to set out some relevant background facts which were adduced into the record or presented as evidence.

The Lacolle Subdivision is an approximately 33 miles long track which extends from the Montreal terminal south to Rouses Point, NY, a change-off location less than a mile south of the US border. The track on the Lacolle Subdivision has been owned by CP Rail during all material times in this matter. Prior to 1991, before the purchase of D&H by CP, the Lacolle Subdivision was owned and operated by D&H, an independent third-party railway incorporated in the state of New York. D&H Corporation owned the Napierville Junction Railway ("NJR") which was its

Canadian Subsidiary. In May 1991, CP purchased D&H Corporation which included NJR. After the purchase, the railroad from Rouses Point to St Luc, Quebec, became known as the Lacolle Subdivision.

In 1990 and 1991 D&H Corporation, the Canadian Brotherhood of Locomotive Engineers ("BLE") and the Canadian United transportation Union ("UTU") signed separate agreements to establish an interdivisional run ("IDR") from Saratoga, New York, into St Luc Yard in Montreal, Quebec. The IDR would allow a train to travel from Saratoga to Montreal without the need for a stop at Rouses Point, New York.

Shortly after the May 1991 acquisition, BLE (the preceding union to the TCRC) and CP reached an agreement concerning the integration of the operation of NJR and D&H with CP aiming to offset the adverse effects of the merger and settle outstanding claims. That agreement referred to the co-operative efforts of CP, NJR and D&H to expedite traffic which resulted in increased work opportunities for all parties. NJR officially became part of the Quebec Division of CP on April 1, 1992.

In June 1996, NJR and CP reached an agreement to bring all NJR employees under the Canadian train and engine employee Collective Agreements. In June 2000, a local agreement was reached between CP, BLE and UTU in relation to train operation in the Montreal terminal and Lacolle Corridor. In this agreement, the parties implemented Conductor-only assignments (the Quebec division is not conductor only territory) on the Lacolle Subdivision and set terms and conditions for the operating crews on the Lacolle corridor.

In March 2007, CP and the Union entered into another local agreement, known as the 304 Pool agreement, in relation to train operation in the Montreal terminal and Lacolle corridor. This

agreement allowed the Company to operate conductor only assignments on the Lacolle Subdivision and set terms and conditions for the operating crews on the Lacolle corridor.

The Union (TCRC) and the Company, since the day following the purchase of D&H, allowed US crews to board train and depart train from the Lacolle Subdivision. The evidence adduced before this tribunal and the parties' submissions demonstrate that, before 2010, there was a well-established past practice to occasionally let US crews move freight to or from the Lacolle Subdivision. As an example, the parties referred to the "Robbie Burns turn" where the 304 Pool crews assemble trains at St Luc to be taken out either by 304 Pool crews or by US Crews.

Both parties confirmed in their presentations that the US D&H crews, since the purchase in May 1991 and up until October 2013, would not perform switching, lifting, or the setting off en-route from the Montreal Terminal. The US crews simply continued to operate their trains as per the IDR Agreement. The US crews would only yard their trains in the Montreal Terminal or depart with their train already prepared by the Canadian crews. Yarding a train is defined as splitting up the train and putting cars into different tracks.

Both parties also confirmed, that from fall 2010 to October 2013, the date of the first grievance, the US crews ceased to operate on the Lacolle Subdivision. Since fall 2010, the 304 Pool crews performed all operations along the Lacolle Subdivision. As mentioned by Mr. Psichogios, Vice-General Chairperson for the Union, US crews did not yard or pick up trains at St Luc and did not rest in Montreal. Rather, they lodged in Plattsburgh, NY. Since fall 2010, the 304 Pool crews no longer performed "Robbie Burns turn". It was also demonstrated that in the span of those three years, the number of employees in the 304 Pool doubled. By December 2013, the

number of Canadian employees and, accordingly, the number of Canadian crews operating Lacolle assignments, had diminished significantly.

The material adduced and the representations of both parties indicate that the practice of using D&H crews in and out of the Montreal terminal was not raised by the Company or the Union in any discussions leading to or during the most recent collective bargaining negotiations in 2014-2015.

ANALYSIS AND DECISION

This arbitration concerns the assignment of work between Rouses Point, NY, and Montreal, on the Lacolle Subdivision. The Union presented the issue as a jurisdictional one, emphasising on the scope of the collective agreement and the Union's exclusive bargaining rights.

The Company invoked its contractual right and/or the past practice that would legitimize the use of US crews to operate or work on the Lacolle Subdivision. It is the Company's view that the right for the US crews to operate from Saratoga to Montreal is secured by contracts, either the IDR contracts or the 304 Pool agreement. Alternatively, should the Arbitrator dismiss their contractual rights, the Company alleges 26 years of past practice and relies on the doctrine of estoppel.

Before delving further into the details of the arguments, it must be underlined that, as recognized by both parties during the hearing, since the purchase by CP of D&H-NJR, the US crews were never permitted to "work" on the Lacolle Subdivision. The NJR Road Switcher, with the reporting location of Rouses Point, was operated by Canadian crews. Neither by contract or past practice would the US crews be allowed to perform switching of rail cars within the Montreal rail yard or to perform lifting or setting off cars on the Lacolle Corridor. Rather, it is clearly

established that a longstanding practice involved only the rights for the US crews to “operate” along the Lacolle corridor.

Thus, the real issue between the parties is whether the US crews could “operate” on the Lacolle Subdivision. In other words, can the US crews, either by contractual right or past practice, legitimately yard their train in the Montreal Terminal or depart with their train already prepared by the Canadian crews?

With that consideration in mind, the Company’s arguments shall be examined before considering the scope of the collective agreement upon which the Union relies.

THE COMPANY’S CONTRACTUAL RIGHTS

To support its claim, the Company referred to the two (2) contracts signed in 1990-91 by D&H Corporation with BLE and UTU. In its view, the Company and the Union were bound by those contracts and respected their terms for the last 26 years. Those contracts, called IDR (interdivisional) contracts, are relied on as giving the right to D&H Corporation to operate on the Lacolle Subdivision.

Other than assert or assume that the Company and the Union are bound by and the beneficiary of the prior agreements called IDR and agreed by third parties, at no time, did the Company demonstrated that those contracts were still binding, while the evidence shows that since the purchase in May 1991, the Company and the Union have negotiated a collective agreement and local agreements that covers the same topics. The Company cannot now return back in time to rely on those earlier contracts called IDR and assert that the contents of those

contracts have not only binding and beneficial effects but also have priority over freshly and subsequently negotiated collective and local agreements.

The Union's objection to this Office's jurisdiction to address the contracts between D&H Corporation and BLE/UTU, called IDR and taken under reserve is, given the previous finding, rejected.

Following its first argument, the Company referred to another agreement signed this time by the Company with the TCRC in 2007 (304 Pool Agreement). In the Company's view, the 304 Pool Agreement allows it to use US crews on the Lacolle Subdivision.

The Company go as far as submitting that if the Union were to cancel the 304 Pool Agreement, by giving the 30-day notice, then the Union by its conduct would thereby be acknowledging that it was cancelling the Company's right to have US crews pick up assembled trains for operation into the United States.

The 304 Pool agreement does not grant any contractual right that clearly allow the Company to use US crews along the Lacolle corridor. But the agreement is evidence of a past practice. The parties thereto express the working conditions of the Canadian crews when US crews bring a train within the terminal (ex: Robby Burns turn).

Along with that reasoning, the undersigned agrees with the Company's argument that by giving the 30-day notice under the 304 Pool agreement, the Union would have had given the notice of intent necessary to revert to the strict terms of the collective agreement. By doing so, it would also have ended the past practice. It seems that the Union chose to file a grievance instead, which has the same effect.

Nevertheless, even if the Company's argument in relation with their contractual rights must fall, the practice introduced and the intent behind those agreements were respected by the Union and the Company following the purchase of D&H Corporation by CP. The history of the agreements illustrates the history of the practice as confirmed by both parties since the purchase by the Company in 1991. In other words, it is the parties' past practice and the remedy of estoppel that allows the Company to legitimately "operate" with US crews on the Lacolle Subdivision, not any alleged contractual rights.

APPLICATION OF THE ESTOPPEL DOCTRINE

In the case *Beatrice Foods* v. *R.W.D.S.U., Local 440*, Arbitrator MacDowell clearly identified the elements necessary for the application of the doctrine of estoppel. Arbitrator MacDowell held that the doctrine of estoppel applies when:

> "[…] 1. There is a representation by words or conduct that a particular legal regime will be maintained; and 2. Where the other party relies upon that representation and, expecting the status quo to continue, forgoes the opportunity to negotiate appropriate contract language. The principle is reciprocal. It is available whether an employer, relying on union behaviour, seeks to maintain a state of affairs more generous than the agreement provides."[1]

In the present case, the essentials of the criteria of the estoppel are met. The parties' past conduct is clear. There was a longstanding practice of US crews bringing trains from Saratoga, NY to St Luc yard, in Montreal, and, as it was called, the "Robbie Burns turn", where Canadian crews assembled trains at St Luc to be taken out either by 304 Pool crews or, on occasion, by US crews.

[1] (1995) 44 LAC (4th) 59

As an aside, but as an addition to the above, the parties' agreements (1996-2000 and 2007- 304 Pool agreement) allow for the passage of non-Canadian crews at certain points. Though these agreements focus on the work conditions for the Canadian crews, they do leave room for the estoppel to exist up until 2013. If the parties' intention was to provide the Union with the exclusive operation on the Lacolle Subdivision, that exclusivity would have been indicated in those contracts. By its silence or acquiescence, the Union clearly indicated its position and agreed that the US crews could "operate" on the Lacolle Subdivision.

The facts also establish that in 2010 the Company halted this practice temporarily. There is no evidence, however, that by doing so the Company had signaled an intention to permanently abandon or cease the practice going forward. The Union alleges that by stopping to use the US crews the Company waived the benefit of estoppel and, second, that the Company is now estopped from using the US crews because of the fact that it stopped doing so for three years.

The Union's argument is reasonable, insofar as the remedy of estoppel has, indeed, a duration and can be brought to an end upon giving the appropriate notice. Nevertheless, in the present circumstances, a relatively short period of three (3) years after more than 20 years of past practice cannot be said to signal a clear intent on the Company's part to stop using US crews. As such, the estoppel for the US crews to operate on the Lacolle Subdivision is established and survived the three years' pause of 2010.

However, the Union is not forever precluded from sending a clear notice to the Company in order to reassert its rights under the collective agreement. Arbitrators generally agree that an estoppel has a limited duration. In the present case, after 2010, there are two elements that have brought the estoppel to an end. First, the Union filed four (4) grievances to contest the past

practice and, second, the parties have, without avail, negotiated in 2014-2015 concerning the collective agreement without mention to the Company's use of US crews.

Regarding the duration of estoppel and the parties' obligation to point out the territorial issue at the bargaining table, the Company explained that it had no reason to renegotiate an agreement it thought it already had. The Company also alleged that it was the Union's obligation to raise the issue during the aforementioned 2014 -2015 negotiations.

As for the Union, it asserts that it clearly signalled that the practice at issue was to be discontinued and that the Union was exercising its exclusive jurisdictional rights under the four corners of the Collective Agreements. The Union also pointed out that in the labour relations context, governed by collective agreements, promissory estoppel is only considered irrevocable until expiry of their current collective agreement. The estoppel does not survive the renegotiation of a new collective agreement. In the Union's opinion it was incumbent upon the Company to negotiate changes to the collective agreement that would allow the use of US crews at the Lacolle Subdivision in the 2014 and 2015 round of bargaining.

In the present case, the Union's position must prevail. It is well understood that the remedy of estoppel is based on the general principle of equity. Prior to the negotiations of the current Collective Agreement, the Union filed four (4) grievances regarding the use of US crews, that was sufficient notice to inform the Company of its intention. It was then the Company's responsibility to raise the issue at the bargaining table.

On the subject, authors Brown & Beatty mention two decisions where the doctrine of estoppel and its duration are discussed.[2]

In *St. Michael's Hospital*, Arbitrator Schmidt had to determine if the collective agreement was giving the right to a specific premium. The arbitrator came to the conclusion that the collective agreement was clear about the payment, even if for the duration of the Collective Agreement the payment was not done by the Employer. The Employer alleged the past practice and the fact that the Union never contested the non-payment during all those years. After specifying that time limits to contest runs from each breach, Arbitrator Schmidt recognized that the practice has been ongoing without protest from the Union. Nevertheless, she indicated that filing a grievance was a sufficient notice to the Employer:

> "The difficulty here is that there can be no detrimental reliance found to be suffered by the Hospital based on any Union representation (its silence) in the most recent round of bargaining. This is because prior to negotiations held on October 25 and December 14, 2010 leading to the current collective agreement the grievance was filed (September 21, 2010). As such, approximately one month prior to negotiations held with respect to the agreement now in force, the Union put the Hospital on notice that it intended to rely on the strict interpretation of the collective agreement effective the date of the grievance. Without detrimental reliance through the last round of bargaining no estoppel can be established and accordingly, the Hospital's final argument fails."[3]

The principle of equity and the fact that filing a grievance may bring the estoppel to an end are shared with other arbitrators. Arbitrator Lanyon, in *TAAN Forest Limited Partnership*, came to the same conclusions. As Arbitrator Schmidt, he referred at the remedy of estoppel as being based on the general principle of equity – the prevention of inequitable detriment. Arbitrator Lanyon concluded as follow:

> "The circumstances of this matter have proven to be unique, complex and litigious. Given all the circumstances before me in this matter, and the conduct of each of the parties, I have concluded that it is equitable

[2] Brown & Beatty (4th edition, June 2017 update), vol. 1, p.2-93
[3] (2012), 215 L.A.C. (4th) 366

> that the estoppel run until the date of the Award. It is only at this point that the parties have a better understanding of their respective rights and obligations under the Collective Agreement to which they are both subject."[4]

Arbitrator Foisy, in *Air Canada*, was of the same opinion and stated the following:

> "In any case, the only appropriate finding open to this arbitrator is a conclusion that the Company's actions were based on the honest, albeit mistaken view, that the union was in agreement therewith. That is to say that the company's actions were based on an honest belief that the union did not object to the breach of the contractual relations specifically art. 18 of the collective agreement. Due consideration must be given the circumstances surrounding the November 12th meeting. The survival of the company was at stake. Management had made it clear that either concessions would be made or the company would be forced to discontinue its business. If the union was silent on this matter then it can be said that they contributed to the misunderstanding which prompted the company's actions in this regard.
>
> Accordingly, I find the defence of "estoppel" to be appropriate in this matter, but only in the short term. There is an additional characteristic which arbitrators have identified as being integral to the doctrine of equitable estoppel. That being that the doctrine may have a limited duration and operate only retrospectively. Thus, notice of a reversion to the strict terms of the agreement, or the filing of a grievance, may bring the estoppel to an end see: Re Canada Sand Papers Ltd. And E.C.W.U., local 12 (1981). If the company was acting on the assumption that the union had acquiesced in this matter, it certainly should have been clear to them when the grievances were filed that such acquiescence had been withdrawn and the union was reasserting its rights under the collective agreement. Consequently, the company's defence if equitable estoppel would only be appropriate to that period of breach which took place prior to the dates of the grievances at which time the company should have been aware that they no longer had any union consent."[5]

Thus, considering both the jurisprudence and the evidence presented before me, I find that the doctrine of estoppel applied to the aspect of operations performed by the US crews on the Lacolle Subdivision up until the Union's notice, which was given by filing the first grievance in October 2013. The Union's grievances served as notice to the Company making it aware that the Union reasserted its rights under the Collective Agreement. The filing of the first grievance,

[4] (2017), 274 L.A.C. (4th) 1
[5] 1997 CanLII 1824 (QC.LA)

on October 29, 2013, brought the estoppel to an end. From that date the parties had to rely on the strict terms of the collective agreements.

JURISDICTION

The only question left is the jurisdictional one. The Union maintains that any work assigned to parties outside the TCRC Collective Agreements, via contracting in or otherwise, is violation of those agreements and the *Canada Labour Code*. It is the position of the Union that such rights cannot be unilaterally changed by the Company. The Company is not permitted to unilaterally expand or relax the existing territorial jurisdiction as defined within the collective agreement. There is no legal mechanism by which the Company is entitled to relax the boundaries of the "four corners" of the Collective agreements.

The Union invoked two awards of this Office wherein the Company, by the exercise of the material change prerogatives, effectively assigned work under one collective agreement to employees who worked under another. Both cases dealt with very similar issues. Arbitrator Picher, in **AH609**, concluded as follow:

> "For all the foregoing reasons the Arbitrator finds and declares that the material change provisions of the four collective agreements do not extend to permitting the Company to assign employees who hold seniority and work under one territorial collective agreement to perform work over lines which fall under another territorial collective agreement. Any such arrangement must be the subject of negotiation and agreement with the Union Alternatively, should the Arbitrator's analysis be incorrect, the Company is estopped from implementing such change until such time as the parties return to the bargaining table for the renewal of the collective agreements."

Arbitrator Stout, in *Canadian Pacific Railway* and *Teamsters Canada Rail Conference*[6], came to the same conclusions and stated:

> "…I agree with the Union that in the matter before me, the Company is in effect using non-bargaining unit employees operating Company trains on the Company's Canadian lines. Such conduct violates the Unions exclusive bargaining rights as well as the terms of the Collective Agreement.
> […]
> Any arrangement involving altering the specific terms of the Collective Agreements regarding rest and bargaining unit work must be the subject of negotiation and agreement with the Union."

The reasoning of Arbitrators Picher and Stout is equally applicable to the grievances before me.

The Company tried to distinguish the facts of the present case from those of the two awards by referring to the three agreements in 1990-91 and 2007 (D&H Corporation and BLE/UTU and the 304 Pool agreement) in place and the longstanding course of conduct between the parties for more than 26 years. While the argument has some merit, it cannot be applied after the Union filed its first grievance on October 2013.

In light of those two awards and for all the foregoing reasons, I find that as of October 29, 2013, the Company could no longer assign employees who hold seniority and operate and/or work under one territorial collective agreement to perform operations or work over lines which fall under another territorial collective agreement. To permit trans-territorial assignment, the Company would have had to negotiate it at the last bargaining table in 2014-2015 and obtained the Union's approval.

[6] Dated at Toronto, Ontario, November 9, 2015.

Thus, the grievances are allowed. The company shall cease and desist from any such future violations of the collective agreements. I order that all work done by US crews since October 29, 2013, be returned to the bargaining unit.

The matter is remitted to the parties on the issue of compensation. I remain seized in the event that they are unable to resolve that issue.

October 5, 2017

MAUREEN FLYNN
ARBITRATOR

ANNEX A

THE UNION'S SECOND EXPARTE STATEMENT OF ISSUE

Dispute

The Union asserts a violation of the Collective Agreements, the Canada Industrial Relations Board certificate certifying the Union as the exclusive bargaining agent for all running trades employees, the NJ Agreement and historical practice as a result of the Company assigning bargaining unit work to non-bargaining unit employees/members on the Lacolle Subdivision.

Statement of Issue

Commencing in or about December, 2013 the Union became aware that non-bargaining unit crews from the United States were performing bargaining unit work. Specifically, the Union became aware that U.S. crews were operating assignments, including switching and lifting cars, on the Lacolle Subdivision. This work has been assigned to and performed by members of the Union covered by the Locomotive Engineers' Collective Agreement East or the Conductor, Trainmen and Yardmen Collective Agreement East.

The Union maintains that the assignment of this work to non-bargaining unit employees/members is a violation of the Collective Agreements, the NJ Agreement and historical practice. Further, the Union maintains that the assignment of the foregoing work to non-bargaining unit employees/members is contrary to the Canada Industrial Relations Board certificate certifying the Union as the exclusive bargaining agent for all running trades employees

The Union requests the following relief:

i. A Declaration that the Company is in violation of the Collective Agreements, the Canada Industrial Relations Board certificate certifying the Union as the exclusive bargaining agent for all running trades employees, the NJ Agreement and/or historical practice as a result of the Company assigning bargaining unit work to non-bargaining unit employees/members on the Lacolle Subdivision;

ii. An Order directing the Company to cease and desist from the foregoing violations;

iii. An Order directing the Company to return all bargaining unit work to the Union's members;

iv. An Order directing the Company to make all affected employees whole; and

v. Such other relief that may be appropriate.

The Company disagrees and denies the Union's requests.

THE COMPANY'S EX PARTE STATEMENT OF ISSUE:

US crews from the Delaware and Hudson Railway ("D&H") have operated trains and continue to have the right to operate trains on the Lacolle Subdivision. The Company asserts that this right to operate trains is premised on agreements between the Company and the Union's predecessor as well as long standing practice and conduct. The Union has never "owned" entitlement to all operations on the Lacolle Subdivision.

The Union has failed to establish a violation of the Collective Agreement. If any violation of the Collective Agreement were established it would be limited to the four (4) dates indicated in the Union's grievance submissions.