CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 527

Heard at Montreal, Wednesday, October 15, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated Article 2.1 of the Agreement – Recognition and Scope – when it transferred certain work to employees outside the scope of the Agreement.

JOINT STATEMENT OF ISSUE:

In the Fall of 1974 the Company transferred the payrolls for non-schedule Express Supervisors from Express Terminals on the Mountain Region in the regional offices of the Express and Intermodal Department which are not covered by the scope of the Agreement. The Brotherhood contends that the Company does not have the right to transfer the work of payrolls for non-schedule Express Supervisors from the terminals to regional offices. The Company disputes the Brotherhood's contention.

This grievance has been progressed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) S. T. COOKE
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– System Labour Relations Officer, Montreal
R. J. Wiebe	– Labour Relations Assistant, Edmonton

And on behalf of the Brotherhood:

R. Henham	– Regional Vice President, Vancouver
P. E. Jutras	– Regional Vice President, Montreal
I. Quinn	– Local Chairman, Montreal
J. A. Pelletier	– National Vice President, Montreal

AWARD OF THE ARBITRATOR

In this case, a certain amount of work was transferred from several Express Terminals on the Mountain Region, where it had been performed by employees in this bargaining unit, to the regional offices of the Express and Intermodal Department, where it has been performed by employees who, it appears, are not within the bargaining unit, and not covered by the collective agreement. The issue is whether this was a violation of the collective agreement.

It was argued that this transfer of work constituted a "Technological, operational or organizational change" of the sort contemplated by Article VIII of the Job Security Agreement, binding on these parties, and that no notice thereof was given. While it may be that this transfer of work could be described as an operational change, it was not, from the material before me one which had "adverse effects on employees". It is only to such changes that Article VIII applies. It is true that, over the long run, this change, combined with other possible changes, might be an indirect factor in what might be described as "adverse effects" but, from the material before me, no adverse effects of the sort for which Article VIII prescribes as remedy had occurred, or could be expected to occur. Quite apart from the consideration that no issue relating to Article VIII is referred to in the Joint Statement of Issue, I find that there has been no violation of that article in this case.

Article 2.1, referred to in the Joint Statement of Issue, is the recognition clause, providing that the Union is the bargaining agent "with respect to wages, hours of work and other working conditions" for certain classes of employees including those who had formerly performed the work in question. There has been no violation of this provision. The Union continues to be the bargaining agent for the groups of employees constituting the bargaining unit. It may not, strictly speaking, be a relevant consideration, but it may be noted that, as indicated above, the transfer of work which the Company effected has not altered the size or composition of the bargaining unit.

I was not referred to any provision in the collective agreement (and there appears to be none) which would require the Company to continue to assign particular work to employees in the bargaining unit, or which would prevent it from "contracting-out" certain work, or from assigning it to employees in another area, or in another bargaining unit, or to employees not coming within any bargaining unit.

A similar question has arisen in a number of other cases, of which **Case No. 246** is perhaps the best example. There, as in other arbitration cases generally, it was held that in the absence of an express provision preventing it, the assignment of work which might be performed by a person in the bargaining unit, to a person outside the bargaining unit, was not in itself a violation of the collective agreement. That conclusion applies equally in this case, there is no restriction against the assignment of the work in question to persons outside the bargaining unit.

In its brief, the Union referred to a recent Memorandum of Settlement made by the parties, providing that "existing rules or practices" would not be amended except as specified in the memorandum. The assignment of work is not, in my view, a "rule or practice" in this sense, and the transfer of this aspect of its operations was not the amendment of a "rule or practice".

For the foregoing reasons it must be my conclusion that there has been no violation of the collective agreement. The grievance is accordingly dismissed.

(sgd.) J. F. W. WEATHERHILL
ARBITRATOR