

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1160

Heard at Montreal, Wednesday, December 21, 1983

Concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

#### **DISPUTE:**

Policy grievance concerning supervisors driving the Command Post Mobile tractor trailer to and from derailment sites.

#### **JOINT STATEMENT OF ISSUE:**

The Company has put into service an emergency response vehicle called the Command Post Mobile. This vehicle is a trailer custom fitted with sophisticated equipment for use at train derailments involving hazardous commodities. This Command Post Mobile may be shipped by railway flatcar or hauled by a tractor on the highway.

The Brotherhood contends that Appendix IV of agreement 5.1 requires the Company to assign the work of driving this vehicle to and from derailment sites to members of the bargaining unit.

The Company disagrees.

#### **FOR THE BROTHERHOOD:**

**(SGD.) TOM MCGRATH**  
NATIONAL VICE-PRESIDENT

#### **FOR THE COMPANY:**

**(SGD.) D. C. FRALEIGH**  
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

J. R. Gilman	– Senior Manager Labour Relations, Montreal
W. W. Wilson	– Manager Labour Relations, Montreal
S. A. MacDougald	– System Labour Relations Officer, Montreal
J. B. Bart	– Labour Relations Officer, Toronto
J. Muirhead	– Co-Ordinator Service Design, Montreal

And on behalf of the Brotherhood:

T. N. Stol	– Representative, Toronto
Y. Beliveau	– Witness, Montreal
R. J. Fitzgerald	– Observer
M. Moretto	– Observer
A. S. Wepruk	– Observer

## **AWARD OF THE ARBITRATOR**

Because of major derailments on Canadian rail lines that have recently occurred such as the Mississauga incident in 1979, the Company has recognized the need "for a central, on-site facility from which necessary activities involved in handling this type of derailment could be co-ordinated and which had the capability to allow the necessary communications with Company officers, Company Train Movement Systems, civil authorities, government regulatory agencies, chemical industry specialists, the media and so on" (see Company's brief at p. 3).

To this end the Company designed and custom built an experimental unit which has been named the Command Post Mobile 1. It is presently serving the Great Lakes Region (Ontario) where the heaviest concentration of dangerous commodities movement occurs. It is stationed in a state of readiness at the Brampton Intermodal Terminal, immediately northwest of Toronto, Ontario (see Company's brief, p. 3).

The Company has appointed a General Superintendent of Transportation to command the mobile unit. Assisting the Commander is a Communications Officer who is responsible for the operation of the communications facilities in the Command Post Mobile. The Communications Officer is also responsible for transporting the Command Post Mobile to and from a derailment site. One of his many duties is the driving of the tractor which hauls the Command Post Mobile when it is moved along the roads. It is this work to which the Brotherhood lays claim (see Company's brief, p. 4-5).

The Communications Officer is a non-union supervisor who acts in this capacity only when working in the Command Post Mobile. He is obviously trained in the operation of the communications facilities in the Command Mobile and must be in possession of a Class "A" Ontario driver's licence to permit him to perform the transportation duties of taking the Command Mobile to a derailment site (see Company's brief, p.5).

The seven Communications Officers who have been appointed from the Company's managerial and supervisory ranks are "on call" on a weekly rotational basis twenty-four hours a day to respond on an hour's notice to an emergency situation. The Command Mobile is maintained in a state of readiness at all times at the Brampton Intermodal facility. The function of transporting the Command Mobile Unit by tractor to a derailment site represents only a small portion of the duties performed by the Communication Officer in the event of a derailment (see Company's brief, p. 6-7).

The Trade Union relies upon a letter of understanding attached as Appendix (IV) to the wage agreement in support of its claim that the function of transporting the Command Mobile Unit to a derailment site is properly the work performed by members of the bargaining unit. It therefore requests a declaration, in light of the Company's assignment of that function to supervisors, indicating that the said work should be performed "by our Tractor Trailer Operators" (see Union's brief at p. 8).

The letter of understanding, dated July 14, 1967, attached as Appendix (IV) to the collective agreement reads as follows:

During present Article 111 negotiations on Agreement 5.1 you expressed concern about non-scheduled supervisors performing work normally done by employees covered by the Wage Agreement. You will recall this matter was referred to in Mr. N. J. McMillan's letter of June 14, 1967.

This will re-affirm the opinion expressed by Mr. McMillan that the main function of such supervisors should be to direct the work force and not engage, normally, in work currently or traditionally performed by employees in the bargaining unit.

It is understood, of course, there may be instances where, for various reasons, supervisors will find it necessary to become so engaged for brief periods, However, such instances should be kept to a minimum.

For the purposes of disposing of the issues raised in this grievance I am prepared to assume without necessarily finding that the function of transporting the Command Mobile Unit by tractor to a derailment site is not only work that a bargaining unit employee is capable of performing but is properly bargaining unit work. In this regard, the Trade Union has satisfied me that its members have the qualifications and the ability to perform that particular function. Indeed, notwithstanding the importance of the procedures introduced by the Company in attending to the emergency situations arising out of a derailment incident, if the collective agreement protects the work in question as

an exclusive function of the employees in the bargaining unit then management must subordinate the procedures it has adopted to the superceding provisions of the collective agreement.

As I understand the arbitral jurisprudence there are two approaches that are available to a Trade Union to protect bargaining unit work from being performed by supervisors and other non-bargaining unit personnel. The first approach would require a specific provision in the collective agreement (known as a work protection provision) that expressly prohibits bargaining unit work from being assigned to managerial staff or to employees outside the bargaining unit. The second approach suggests that when bargaining unit work is performed on a regular and continued basis by supervisory staff or non-bargaining unit employees to the extent that such employees are no longer performing their normal duties then the Trade Union may claim that these employees ought to be absorbed into the bargaining unit. If the Trade Union cannot establish a case on the basis of either of these approaches, then management, in the exercise of its prerogative in operating its enterprise, is free to continue to make the impugned assignments to its supervisory or non-bargaining unit employees. Or, from a different perspective, an employee member of the bargaining unit, in the absence of a provision in the collective agreement to the contrary, does not have a proprietary interest in his job.

In addressing myself to the specific circumstances of this case I am satisfied that the Trade Union has failed to make a case for the relief requested on the basis of either of the approaches mentioned above. There is lacking a work protection provision in the collective agreement that inhibited the Company from assigning the duty of transporting the Command Mobile Unit by tractor to a derailment site to its supervisory employees. Nor given the isolated nature of derailments can such work be considered to occur on a regular continual basis so as to warrant a claim absorbing such supervisors as part of the bargaining unit.

The Trade Union rests its case on the basis of the letter of understanding attached as Appendix (IV) to the collective agreement. Apart from the dubious enforceability of the contents of that document (see **CROA 322**), the letter of understanding merely amounts to a declaration by the Company of its intention that the instances where supervisors perform work normally performed by employees covered by the wage agreement "should be kept to a minimum". Moreover, the document specifically preserves management's prerogative to continue to assign in isolated and incidental situations bargaining unit work to its supervisory staff. In this context, the letter stresses:

It is understood, of course, there may be instances where for various reasons, supervisors will find it necessary to become so engaged for brief periods.

In short, I am satisfied that the procedures introduced by the Company to respond to the isolated, emergency situation of a train derailment, inclusive of transporting the Command Mobile Unit to a derailment site, are expressly contemplated by the letter of understanding which allows, when necessary, the Company to engage supervisors to perform bargaining unit work for brief periods.

For all the foregoing reasons, the grievance is denied.

**(signed) DAVID H. KATES**  
**ARBITRATOR**