CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1675

Heard at Montreal Thursday, July 16, 1987

Concerning

CANADIAN NATIONAL RAILWAYS

And

UNITED TRANSPORTATION UNION

DISPUTE:

Alleged violation of Article 79 – Material Change in Working Conditions – of Agreement 4.16 when the 1000 Yard Assignment, South Parry Yard, was abolished.

JOINT STATEMENT OF ISSUE:

On March 1, 1985, the 1000 Yard Assignment in South Parry Yard was abolished.

The General Chairman submitted a grievance dated March 22, 1985, contending that the Company was in violation of Article 79 by not serving formal notice of a material change in working conditions.

The Company declined the grievance on the basis that Article 79 was not applicable to the abolition of the 1000 South Parry Yard Assignment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) W. G. SCARROW	(SGD.) D. C. FRALEIGH
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Labour Relations Officer, Montreal
D. W. Coughlin	– Manager Labour Relations, Montreal
M. C. Darby	– Co-ordinator Transportation, Special Projects, Montreal

And on behalf of the Union:

W. G. Scarrow	– General Chairman, Sarnia
R. A. Bennett	– General Chairman, Toronto
T. Hodges	– Vice General Chairman, Toronto
B. Leclerc	– General Chairman, Quebec
R. LeBel	– Vice General Chairman, Quebec

AWARD OF THE ARBITRATOR

The material establishes, beyond dispute, that prior to the abolition of the South Parry Yard, located at Parry Sound, Ontario, the principal source of work was the servicing of a bulk distribution facility operated by Shell Oil Company, which accounted for some 70 to 80 cars per month. After February of 1985, when Shell Oil relocated its bulk distribution facilities to Toronto, discontinuing rail shipments from Parry Sound, the volume of traffic in South Parry was reduced to almost nothing. In the ten month period between March and December 1985 inclusive, the South Parry Yard handled an average of 1.5 cars per month, a volume which can easily be switched by the use of road crews, and which plainly does not justify the continuance of a yard facility in South Parry. It is not disputed that the Company did not give the Union notice of a material change in working conditions in these circumstances, notwithstanding that two employees were required to relocate to Toronto as a result of the Company's action.

The merits of the grievance are governed by the provision of article 79 of the collective agreement which provides, in part, as follows:

> **79.1** The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon the employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with this paragraph.
>
> **a)** the Company will negotiate with the Union measures other than the benefits covered by paragraphs 79.2 and 79.3 to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in Agreement provisions considered necessary for the implementation of a material change is also subject to negotiation;
>
> **...**
>
> **K)** WHEN MATERIAL CHANGE DOES NOT APPLY
> 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 reassignments of work or other normal changes inherent in the nature of the work in which employees are engaged;

In the arbitrator's view, subsection (k) of the foregoing provision conclusively resolves this grievance. When material changes in working conditions can be described as "changes resulting from a decline in business activity", the Company is exempted from the general obligation to give adequate notice and negotiate with the Union prior to implementing a material change in working conditions. That is what transpired in the instant case as the work of the South Parry yard was essentially eliminated with the shut-down of Shell Oil's bulk distribution operations at Parry Sound.

The Union relies on a number of prior decisions of this office including **CROA 271, 286, 289 455**. Suffice it to say that none of these awards deals with a fact situation analogous to this case. With the exception of **cases 271** and **289**, the cases cited concern grievances under collective agreements which do not contain exemptions from the material change provisions in respect of "changes resulting from a decline in business activity". In **Case No. 271**, it was found that a fractional reduction of business from one source did not come within the meaning of that phrase. In **Case No. 289**, the arbitrator found that the elimination of a number of trains could not be described as "normal" within the meaning of the collective agreement, and gave no specific consideration as to whether the facts then at hand resulted from a decline in business activity, although it appears implicit in the reasoning of that award that he viewed any reduction in traffic to have been caused by the Company's action in altering the schedule of trains "in such a way as to make them ... less desirable to the travelling public."

None of the foregoing cases is instructive in the context of the instant grievance. It is uncontroverted that the volume of traffic within the South Parry Yard dropped abruptly from a factor of 80 to 1.5 on a monthly basis. That outcome was entirely uninfluenced by any action on the part of the Company, it was due solely to the independent decision of the principal industrial user of the yard's services, Shell Oil Company, to discontinue its operations. In my view, it would be difficult to find a more clear example of a change resulting from a decline in business activity. I must therefore conclude that the facts at hand fall within the contemplation of article 79.1(k) of the collective

agreement, that the Company was under no obligation to provide the advance notice to the Union contemplated under article 79.1 and that no violation of the collective agreement is disclosed. For these reasons, the grievance is dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR