

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2138

Heard at Montreal, Thursday, 11 April 1991

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim of the Union that certain changes in the operation of Train 436 on and subsequent to March 31, 1988 constituted a material change in working conditions.

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

At the material time, Train 436 operated from Fort Erie, Ontario to MacMillan Yard in Toronto manned by Toronto-based chain gang crews. On various dates between March 31 and September 4, 1988, Train 436 was operated from Fort Erie to MacMillan Yard via Oshawa.

The Union contends that this change in the operation of Train 436 constituted a material change in working conditions to which the provisions of Article 79 of Agreement 4.16 applied. Therefore, the Company could not institute this change in operations until the provisions of that Article had been complied with.

The Company contends that the change at issue is not a material change in working conditions and that the provisions of Article 79 do not apply.

#### **FOR THE UNION:**

**(SGD.) T. G. HODGES**  
GENERAL CHAIRMAN

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

**(SGD.) M. DELGRECO**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
S. F. McConnville	– Labour Relations Officer, Montreal
M. Hughes	– Labour Relations Officer, Montreal
B. Laidlaw	– Labour Relations Officer, Montreal
B. J. Mahoney	– System Transportation Officer, Montreal
J. M. Kelly	– Labour Relations Officer, Toronto

And on behalf of the Union:

T. G. Hodges	– General Chairperson, St. Catharines
G. E. Binsfeld	– Secretary/Treasurer, GCA, St. Catharines
W. J. Storing	– Local Chairman, Toronto
H. E. Tarr	– Vice-Local Chairman, Toronto

#### **AWARD OF THE ARBITRATOR**

In accordance with the rules governing the Canadian Railway Office of Arbitration the Arbitrator is restricted, in the instant matter, to the dispute as defined in the Joint Statement of Issue, namely that the changes in the operation

of Train 436 constituted a material change in working conditions. Upon a review of the material filed, without commenting on the merits of the specific claims which may have been progressed separately and individually, I cannot find that the occasional assignment of crews to operate from Fort Erie to MacMillan Yard in Toronto via Oshawa in response to temporary needs constitutes a material change in working conditions as contemplated by Article 79 of the Collective Agreement. As was noted in **CROA 221**, the concept of material change "...contemplates some substantial dislocation of employees with respect to their work, as to time, place or fundamental character." As a general rule material change implies a permanent or systemic operation or organizational change. The material before me does not disclose a change of that order. I cannot conclude that what took place fell within the purview of Article 79 of the Collective Agreement.

For the foregoing reasons the grievance must be dismissed.

12 April 1991

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**