

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2375

Heard at Montreal, Tuesday, 13 July 1993

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Appeal of the Company's decision not to negotiate in accordance with Article 78, the adverse effects for Halifax terminal locomotive engineers.

BROTHERHOOD'S STATEMENT OF ISSUE

Effective August 1, 1992, CN Rail Atlantic Region implemented a new system of train scheduling designed to better meet customer requirements. As a result of certain changes in train numbers, advertised arrival/departure times, and train home terminals, Halifax based locomotive engineers have experienced the loss of three assignments of approximately four months' duration.

This then placed three Halifax locomotive engineers in an adverse effect situation. The Brotherhood was prepared to negotiate measures to minimize the adverse effects on the aforementioned locomotive engineers in accordance with the provisions as set forth in article 78 of agreement 1.1.

The Company refuses to negotiate in accordance with article 78 of agreement 1.1.

FOR THE BROTHERHOOD:

(SGD.) B. E. WOOD

GENERAL CHAIRMAN

There appeared on behalf of the Company:

L. F. Caron	- System Labour Relations Officer, Montreal
D. W. Coughlin	- Manager, Labour Relations, Montreal
W. D. Agnew	- Manager, Labour Relations, Moncton
B. O. Steeves	- Transportation Officer, Moncton

There appeared on behalf of the Brotherhood:

B. E. Wood	- General Chairman, Halifax
G. Hallé	- Canadian Director, Ottawa
C. Hamilton	- General Chairman, Kingston
W. A. Wright	- General Chairman, Saskatoon
R. Lebel	- General Chairperson, UTU, Quebec

AWARD OF THE ARBITRATOR

The grievance concerns the application of article 78.1 of the collective agreement. It provides as follows:

78.1 Prior to the introduction of run-throughs or changes in home stations, or of material changes in working conditions which are to be initiated solely by the Company and would have significantly adverse effects on locomotive engineers, the Company will:

- (a) negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay, and
- (b) give at least six months advance notice to the Brotherhood of any such proposed change, with a full description thereof along with details as to the anticipated changes in working conditions.

The material before the Arbitrator establishes, beyond controversy, that the changes implemented by the Company resulted in a net loss of regular assignments to locomotive engineers at Halifax. It is, however, unclear whether at the date of implementation there was any actual demotion of locomotive engineers or any real loss of earnings or work opportunities. This is due, in part, to the fact that a reduced crew operation was implemented at or about the same time, causing a degree of attrition in the ranks of locomotive engineers.

The issue is whether the notice should have issued some six months prior to August of 1992. In the Arbitrator's view, the Company cannot invoke the wisdom of hindsight to argue that it was under no obligation to give the notice provided for in article 78.1 of the collective agreement. If the proposed changes involved a change in home stations which would, in all likelihood, have significantly adverse effects of locomotive engineers, the Company was under an obligation to respect the terms of article 78.1, which includes the requirement to give at least six months' advance notice to the Brotherhood. It is not clear to the Arbitrator that six months prior to August 1, 1992, well in advance of the crew reductions, it was clear that locomotive engineers would, in all probability, suffer no adverse consequences from the reduction of assignments at Halifax.

In the Arbitrator's view, the conditions for the notice under article 78.1 did exist. Firstly, what transpired was a change in home stations within the meaning of article 78.1 of the collective agreement. Certain regular assignments previously serviced for four months of the year from Halifax were, after the changes, serviced entirely from the home station of Moncton. As was noted in **CROA 645**, a change in the headquarters from which relief is furnished constitutes a change in home station. Moreover, the fact that the change in question might affect three employees for only four months of the year does not minimize the merits of the Brotherhood's claim. The loss of the equivalent of one person-year in work opportunities is, I think, within the realm of "significantly adverse effects" contemplated in article 78.1 of the collective agreement.

For the reasons touched upon above, I am also satisfied that, six months prior to the date of implementation, the change contemplated by the Company would have been one which would, in all likelihood, have adverse effects of locomotive engineers. Even though it may be shown that those effects were ultimately mitigated by subsequent events, the Company was nevertheless under an obligation at the time to provide the six months' notice and to endeavour to negotiate such measures as might be appropriate to minimize adverse effects. The Arbitrator makes no comment on whether such effects were in fact mitigated by subsequent events. Obviously the Brotherhood would have some difficulty negotiating any benefits for its members if it could be shown that in the end none of them in fact suffered any real adverse impacts. That, however, is a matter which would have been examined in the course of events, following the appropriate six months' notice.

For the foregoing reasons the Arbitrator finds and declares that the Company failed to respect the requirements of article 78.1 of the collective agreement. The Arbitrator cannot accept the Company's characterization of what transpired as merely the equalization of mileage. The initiative which it undertook, quite properly, was to introduce efficiencies to better service its customers and increase its productivity. In the circumstances the Company was under an obligation to provide notice of a change in home stations, not less than six months in advance. The Company is directed to comply with the requirements of the article to negotiate with the Brotherhood, in the event that the Brotherhood should be able to establish significantly adverse effects on individual locomotive engineers, with the further provisions of article 78 to apply in the event of any failure of the parties to agree.

July 16, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR