

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2518

Heard in Montreal, Tuesday, 13 September 1994

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)  
(CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS)**

**DISPUTE:**

Non-scheduled employees performing work of Bus Drivers contrary to Appendix II of Agreement 5.1

**JOINT STATEMENT OF ISSUE:**

During the period in question, PSAC picket lines were established at various CN locations in the Vancouver area. Non-scheduled employees operated buses for the movement of train crews and other employees in and around the Thornton Yard complex.

It is the Union's position that the operation of the crew buses should have been performed by employees in the 5.1 bargaining unit, and claims were therefore submitted on behalf of nine employees.

The Company denies any violation of Agreement 5.1.

**FOR THE BROTHERHOOD:**

**(SGD.) T. N. STOL**  
**NATIONAL VICE-PRESIDENT, CBRT&GW**

**FOR THE COMPANY:**

**(SGD.) M. M. BOYLE**  
**for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

- O. Lavoie – System Labour Relations Officer, Montreal
- L. F. Caron – System Manager, Labour Relations, Montreal
- J. Vena – Coordinator, Special Projects, Transportation, Montreal

And on behalf of the Union:

- P. Askin – Representative, CAW, Vancouver

### AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not in dispute. A strike by members of the Public Service Alliance of Canada caused a picket line to be erected at the Fraser Bridge linking Surrey and New Westminster, B.C. between September 13 and October 3, 1991. The picket line raised by striking bridgetenders effectively blocked rail traffic on the bridge for that period of time. In the circumstances the Company used supervisors to operate the trains across the bridge, and also to drive the train crews around the bridge to rejoin their train. The transportation was generally done in a rented van and is estimated to have taken up approximately fifteen minutes per hour over a twenty-four hour day.

Appendix II of the collective agreement reads as follows:

Dear Mr. Nicholson:

During the present Article III 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 reaffirm 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.

This matter is again being brought to the attention of our operating officers.

Yours truly,

(sgd.) S.T. Cooke  
Assistant Vice-President  
Labour Relations

The Company alleges that what transpired was exceptional work allowed by the terms of Appendix II to the collective agreement. It stresses that the Company officers remained responsible for their normal duties of supervising train crews and, to some extent, operating trains, and that the fifteen minutes per hour devoted to transporting train crews was incidental to their functions. It submits that they did not effectively engage in work normally, currently or traditionally performed by bargaining unit members, in the sense contemplated within Appendix II. The Company also submits that the work in question is not, in any event, work over which the Union can assert exclusive ownership, as the transportation of train crews in and around Vancouver is not exclusive to the bargaining unit. In this regard, it notes that while members of the Union are employed to drive train crews within Thornton Yard, and more recently to and from the Vancouver Intermodal Terminal, they have not traditionally driven train crew members in other circumstances, such as those arising in the case at hand. In support of its view the Company cites **CROA 322, 1160 and 2006**.

The Union's representative contests the suggestion that the work in question was of an emergency nature, stressing that the transportation of train crews by employees classified as bus drivers, through the use of motorised vans, is a normal bargaining unit assignment. The Union argues that the work in question could not be said to have been emergent in nature, at least after the first few days, when the picket line was well established. In support of his position the Union's representative refers the Arbitrator to a number of prior decisions of this Office, including **CROA 243, 337 and 379**.

He argues, in part, that the transportation of running trades crews in vans is a normal part of the duties exercised by employees classified as bus drivers. It is common ground that bus drivers are utilised within the confines of Thornton Yard, as well as at the Vancouver Intermodal Terminal, to transport train crews to and from their train consists. On that basis the Union's representative submits that the work in question, which he maintains was not urgent, was work normally to be performed by employees in the bargaining unit.

A threshold question to be determined is whether in fact the work in question can be said to be “normally ... currently or traditionally performed by employees in the bargaining unit” within the meaning of Appendix II of the collective agreement. The Arbitrator has some difficulty with the submission of the Union that it is. While the material before me establishes, beyond controversy, that bus drivers are employed in the bargaining unit to drive vans transporting running trade crews to and from various locations within Thornton Yard, and on a private Company road to and from the Vancouver Intermodal Terminal, the evidence does not disclose that they are normally or regularly used to transport deadheading employees to and from other locations outside those terminal confines. Further, it does not appear disputed that within the greater Vancouver area the transportation of running trades crews to and from various locations, including deadheading crews, is done by taxi.

Even if the Arbitrator should accept the submission of the Union with respect to the work in question not being emergency work or work that is urgent in nature, the evidence before me would not establish, on the balance of probabilities, that the driving of running trades crews around the picketed bridge would fall within the purview of work normally performed within the bargaining unit. In my view the work in question is most analogous to the transporting of deadheading employees to and from a point outside the terminal. As noted above, such work has not traditionally been performed by members of the bargaining unit. On that basis, I am satisfied that the driving which is the subject of this grievance, cannot fairly be characterised as traditionally or normally performed by employees in the bargaining unit. There has therefore been no violation of Appendix II of the collective agreement, and the grievance must be dismissed.

16 September 1994

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