

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2565

Heard in Montreal, Thursday, 15 December 1994

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The interpretation of article 47, Clause (1)(a) of the collective agreement as it applies to the abolishment of the positions called Hump Bosses in Winnipeg.

JOINT STATEMENT OF ISSUE:

The Corporation has bulletined the abolishment of Hump Bosses in Winnipeg, stating that such assigned positions are no longer required.

The Union objected to this bulletin and stated that it is not in conformance with the provisions of article 47, clause (1)(a) of the collective agreement. A grievance was initiated regarding this objection.

The Corporation has declined the grievance on the basis that the collective agreement contains nothing to preclude this method of abolishing assignments. Finally, the Corporation takes the position that they have not changed the manner in which the article has been applied and there is no reason to do so.

FOR THE UNION:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) M. E. KEIRAN
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

M. E. Keiran	– Manager, Labour Relations, Vancouver
R. N. Hunt	– Labour Relations Officer, Montreal
R. A. Geoffrey	– Manager, Operations, Manitoba Division
R. M. Smith	– Labour Relations Officer, Montreal

And on behalf of the Union:

L. O. Schillaci	– General Chairperson, Calgary
D. A. Warren	– General Chairperson, Toronto
D. Finnon	– Secretary, GCA, Saskatoon
T. G. Hucker	– Vice-President & National Legislative Representative, BofLE, Ottawa
R. S. McKenna	– General Chairman, BofLE, Ottawa
Wm. Foster	– Vice-General Chairman, BofLE, London
J. Flegel	– Vice-General Chairman, BofLE, Saskatoon

AWARD OF THE ARBITRATOR

The evidence discloses that the position of Hump Boss has existed in the Winnipeg Yard for some forty years. Humping operations at that location involve the use of trainmen designated as Hump Riders whose work includes riding free-wheeling cars down the hump and into storage tracks, applying the cars' brakes to control speed, bleeding air in cars on marshalling tracks as well as other related functions. The hump boss typically directed the work of the hump riders who, at one point in time, numbered as many as fifteen employees per shift.

The evidence establishes that over the years there has been a substantial decline in the volume of traffic handled in hump operations in Winnipeg Yard. The unchallenged representation of the Company is that cars presently processed through humping operations represent approximately forty percent of volumes which were formerly handled. This is due to a number of factors, relating principally to changes in the manner in which certain types of cars are marshalled, the introduction of longer storage tracks in the G Yard and changes in service to accommodate the yarding and handling of run-through trains. These adjustments, among others, have contributed to a decline in the volume in traffic being handled by humping operations in the yard. These changes are reflected, in part, in the reduction of hump riders employed. On eleven shifts there are presently three hump riders utilized, on eight shifts there are two hump riders and on two shifts only one hump rider is employed. As a result, the Company decided to eliminate the position of hump boss, which gave rise to the instant grievance. The Union alleges that the elimination of the hump boss position is the result of a material change which necessitates a notice to the Union and the application of the provisions of article 47 of the collective agreement.

The Arbitrator cannot sustain the position advanced by the Union. Clearly, as noted above, there has been a substantial decline in the volume of traffic handled in humping operations within the Winnipeg Yard. This has resulted in a drastic reduction in the number of employees assigned as hump riders, to the point where their supervision can be handled directly either by supervisory staff or, on occasion, by the assistance of a car retarder operator. While it is true that a number of changes in the operations within the Winnipeg Yard have, over a period of a number of years, led to a reduction in the volume of humping operations, it cannot fairly be said that what has transpired is an identifiable material change in working conditions adversely impacting employees within the meaning of article 47 of the collective agreement. That article provides, in part, as follows:

47(1)(a) Notice of Material change

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 employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this article.

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47(1) Changes by Normal Application of Collective Agreement

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 reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged.

The case at hand does not disclose a single decision on the part of the Company to introduce an organizational or operational change which directly impacts humping operations. Rather, a number of factors, having to do with the evolution of equipment, the introduction of larger storage tracks and changes in the marshalling of trains through Winnipeg, have caused a reduction in the volume of traffic handled in humping operations. In the circumstances I am satisfied that the facts disclosed reflect changes brought about by a reduction in traffic in humping operations and, to some extent, changes which can be said to be inherent in the nature of the work relating, in a general sense, to the marshalling of trains. The facts of the case at hand therefore fall within the exception of paragraph (1) of article 47 of the collective agreement.

That conclusion, moreover, is reflected in the approach which the Union itself has taken to the dwindling number of hump riders utilized in the Winnipeg Yard. It has never grieved the reduction in those positions on the basis of the application of article 47, as indeed it could not, for the reasons related above. In the circumstances the

Arbitrator must sustain the argument of the Company that it is in no better position to object to the elimination of the supervisory position of hump boss, given the substantial reduction in the number of employees to be supervised. Nor can the Arbitrator conclude that the collective agreement provisions governing the definition of crews composed of yard foremen and yard helpers, found in article 9, is instructive to the case at hand. The collective agreement contains no express reference to hump riders or hump bosses, and it is common ground that those positions have been maintained in the Winnipeg Yard by reason of convention and understanding. There is, however, no evidence of any undertaking or agreement with respect to the ratio, if any, of hump riders to hump bosses, nor any contractual assurance that hump boss positions must be maintained.

In the result, the Arbitrator cannot sustain the position of the Union that there has been a violation of the material change provisions of article 47 of the collective agreement in the case at hand. For these reasons the grievance must be dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR