

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2611

Heard in Montreal, Thursday, 13 April 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Establishment and maintenance of Niagara Falls Furlough Board.

COUNCIL'S STATEMENT OF ISSUE:

The Company failed to indicate the number of surplus employees in Niagara Falls at the 1994 Fall change of timetable, and therefore neglected to indicate the number of furlough board positions available.

This resulted in the improper holding of employees at other than their home terminal, who were and are subject to recall.

The provisions of articles 54, 55, 56, 91 and 92 have been violated.

The Company has declined the grievance stating that the provisions of agreement 4.16 have been complied with.

FOR THE COUNCIL:

(SGD.) W. G. SCARROW
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

D. W. Coughlin	– Manager, Labour Relations, Montreal
J. P. Krawec	– System Labour Relations Officer, Montreal
B. J. Hogan	– Manager, Special Projects, Toronto
J. W. Sauvé	– Manager, Crew Management Centre, Toronto
R. J. Chorkawy	– Superintendent, Transportation, Hamilton

And on behalf of the Union:

P. Gallagher	– Vice-General Chairperson, Yard, Fort Erie
R. Long	– Vice-General Chairperson, Yard, Hamilton

AWARD OF THE ARBITRATOR

During the course of the hearing the Company admitted that at the 1994 fall change of timetable it failed to indicate the number of surplus employees anticipated at Niagara Falls, and by extension the approximate number of furlough board positions contemplated to be available. It is common ground that the Company violated article 91.6 of the collective agreement which deals with the operation of furlough boards. It provides, in part, as follows:

91.6 (a) Upon establishment of the furlough board and at each change of timetable, positions on the furlough board will be advertised to protected freight employees at the terminal only. The bulletin will include the approximate number of positions to be filled on the furlough board.

On the basis of the material filed, therefore, the Arbitrator finds and declares that the Company has violated article 91.6(a) of the collective agreement by failing to provide to the Council the approximate number of positions to be filled on the furlough board at Niagara Falls at the 1994 fall change of timetable. In light of the undertaking of the Company to comply with the article in the future, the Arbitrator deems it unnecessary to make any further determination or direction in respect of this matter.

The second issue before the Arbitrator concerns the allegation of the Council that the Company effectively denied employees the exercise of recall rights to the Niagara Falls furlough board, in an alleged violation of articles 54, 55 and 56 of the collective agreement. Article 54 of the collective agreement deals with the layoff of road and yard service employees in the event of reductions in staff. Article 55 governs the recall of employees from layoff, including the treatment of cutoff employees while article 56 deals with the operation of spareboards. Article 55 provides, in part, as follows;

55.6(a) Employees will be considered as cut off when they have insufficient seniority to hold work at their home station (to which last assigned) but have sufficient seniority to hold work at another terminal on their seniority district.

55.6(b) Protected freight employees, as defined by paragraph 55.1 hereof, will not be cut off. When unable to work at their home station (to which last assigned), employees will have the option to revert to the furlough board at the home station where cut off, in preference to exercising their seniority on the seniority district. When employees are cut off at one home station, they will not be permitted to declare to the furlough board at another home station. Employees electing to declare to the furlough board at their home station will be governed by the terms and conditions set out in Article 91 hereof.

55.8 Employees cut off or displaced, including those unable to hold the spare board at a change of timetable/change of service date, who are compelled to exercise their seniority to another terminal in order to hold work will, (providing they record written request with the appropriate Company officer with copy to the local chairperson at time of displacement), be recalled in seniority order to each home station where they have worked since exercising their seniority from their original home station, when staff at each such location is increased, notwithstanding the provisions of paragraphs 48.13 and 49.22. Employees refusing to return when recalled must file their refusal in writing with the appropriate Company officer (with a copy to the local chairperson) and will thereby forfeit their right to recall.

NOTE: In the application of this paragraph:

(a) employees may elect not to exercise recall rights to any one terminal (and thereby lose recall rights to that location) but will retain rights to other terminals, including their home terminals; and

(b) employees with recall rights who are working under the terms of another collective agreement when recalled under this agreement will be permitted to accept such recall.

The second issue concerns the treatment of employees who, at one time, were employed in the Niagara Falls terminal and who, in preference to opting to go on the furlough board at that location, exercised their seniority on the seniority district to locate to other terminals, including Hamilton. The position advanced by the Council is that under

the terms of the collective agreement the employees in question should be considered as entitled to go on a furlough board at Niagara Falls at the change of timetable, and that they have been deprived of a right of recall in that regard.

The Arbitrator can find nothing in the collective agreement to support the interpretation advanced by the Council. In the case at hand it is common ground that the employees who are the subject of this grievance were previously cut off from service at the Niagara Falls terminal. The right of employees who were cut off to be recalled to their terminal of origin is dealt with, in part, in article 55.11 of the collective agreement which provides, in part, as follows:

55.11 When staff is increased at a terminal, such increase shall commence with the senior employee, including all employees with recall rights, and will continue in descending seniority order in accordance with the provisions of this article, notwithstanding that employees may be laid off, cut off or are working elsewhere on their seniority districts.

As the above provision indicates, the right of recall of an employee is predicated upon there being an increase in staff at a given terminal. In the Arbitrator's view it cannot be contended that the establishing of a furlough board, which is tantamount to the declaring of surplus employees, can be characterized as increasing staff at a terminal where a furlough board is established. Further, the collective agreement appears to clearly contemplate that employees who exercise seniority to another terminal, other than on a temporary position, are thereby taken to have transferred to that terminal. Article 54.8 provides:

54.8 Employees exercising their seniority to another terminal shall be considered as regularly assigned to such other terminal.

When the foregoing provisions are read together, there does not appear to the Arbitrator to be any language within the articles in question to contemplate that an employee who opted not to go on a furlough board at a given terminal and exercised his or her seniority to take a regular assignment at another terminal can, in the absence of an increase in positions at the original home terminal, assert a right of recall, as the Council would have it in the case at hand.

The circumstances of the instant collective agreement are to be contrasted with those which exist under collective agreement 4.3 between the Company and the UTU in Western Canada. Article 40.5 of that collective agreement specifically contemplates a right of the employee to recall to his original home terminal at the change of card. It provides as follows:

40.5 A successful applicant will not be subject to recall to his home terminal unless it would otherwise require the movement of a train service employee from another home terminal to the successful applicant's home terminal, otherwise he will remain at that point as long as the shortage exists or until the next change of card, whichever occurs first. In either case he will be returned to his originating home terminal.

Clearly, under the foregoing provision, which operates in Western Canada, employees are entitled to recall to their originating home terminal at the change of card, or earlier should a shortage exist. There is no comparable provision to be found in the language of collective agreement 4.16, which concerns the dispute at hand. For reasons which the parties must best appreciate, in the negotiation of the Conductor-Only provisions under collective agreement 4.16 no exception to the previous recall provisions was made for the automatic return of employees to their originating home terminals at the change of card. In the absence of any such language, the Arbitrator cannot sustain the position of the Council with respect to the second issue in this grievance.

For the foregoing reasons the grievance is allowed in part. The grievance cannot succeed insofar as it relates to the allegation of the Council that the Company was under an obligation to recall employees to the Niagara Falls terminal at the change of card, where those employees previously left the terminal to regular positions elsewhere by the exercise of their seniority. However, insofar as the alleged violation of article 91 of the collective agreement is concerned, the grievance must succeed. The Arbitrator finds and declares that the Company violated the provisions of article 91.6(a) of the collective agreement by failing to provide to the Council a bulletin including the approximate number of positions contemplated to be filled on the furlough board at Niagara Falls at the 1994 fall change of timetable.

April 20, 1995

(signed) MICHEL G. PICHER
ARBITRATOR

