

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2633

Heard in Calgary, Thursday, 11 May 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Failure to reach agreement on the Material Change Notice served upon the Union dated June 24, 1994 to minimize the adverse effects of the abolishment of four (4) Yard Coordinator positions at Lulu Island, Vancouver, B.C.

JOINT STATEMENT OF ISSUE:

June 24, 1994 the Company served notice upon the Union pursuant to paragraph 34.1, article 34 of agreement 4.2 to abolish four (4) Yard Coordinator positions at Lulu Island, Vancouver, B.C. On December 6 and 7, 1994 the parties met to discuss the measures to minimize the adverse effects.

On December 22, 1994 the parties signed a tentative agreement as a result of the meetings which took place on December 6 and 7, 1994. The employees voted against the tentative agreement reached. It is the Union's position the outstanding issues before the Arbitrator are:

- a. Establishment of a Guaranteed Spareboard for Yard Coordinators at Vancouver;
- b. Early Retirement/Deferred Separation Credit(s);
- c. Safety/Communication.

The Company's position is that the outstanding issues identified by the Union have no merit and the tentative agreement reached December 22, 1994, should be adopted.

FOR THE COUNCIL:

(SGD.) M. G. ELDRIDGE
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. LAIDLAW
FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA

There appeared on behalf of the Company:

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| B. Laidlaw | – Labour Relations Officer, Edmonton |
| E. C. Bruzzese | – District Superintendent, Transportation, Kamloops |
| B. Ballingall | – Human Resources Officer, Kamloops |

And on behalf of the Council:

- | | |
|----------------|--------------------------------------|
| M. G. Eldridge | – Vice-General Chairperson, Edmonton |
| C. S. Lewis | – Secretary, G.C.A., Edmonton |

AWARD OF THE ARBITRATOR

The first issue to be considered is whether the Arbitrator should direct the establishment of a guaranteed spareboard for yard coordinators at Vancouver. It is difficult to see how that request can be accommodated. The setting up of a guaranteed spareboard is contemplated under article 43 of the collective agreement. That article gives to the Company the discretion to establish yard coordinators' spareboards "... where necessitated by operational requirements". Without dealing with the submission of the Company that the ordering of such a spareboard would be beyond the scope of the Arbitrator's jurisdiction, there is no compelling evidence before me to establish that operational requirements at Vancouver justify or require the establishing of a guaranteed spareboard. I cannot, therefore, accept the submission of the Union that such a measure should be ordered.

Nor can I find that the request for early retirement or deferred separation credits made by the Union is justified in the case at hand. For reasons discussed more amply in **CROA 2514**, the extraordinary measure of early retirement and deferred separation packages is normally associated with a situation in which there is a demonstrated need to accelerate the attrition process, in circumstances where there would otherwise be a surplus of employees. Those circumstances do not arise in the case at hand, as there is no evidence upon which to conclude that any of the employees adversely affected by the material change notice are at risk of being declared surplus. For these reasons, this aspect of the Union's position must be declined.

Having regard to the submissions of the parties at the hearing, however, the Arbitrator is satisfied that it is appropriate to make a direction in respect of safety and communication. The Union's concern in this regard was prompted, fairly I think, by the possibility that employees in yard crews working at Lulu Island would be without any radio communication with yard traffic coordinators at Thornton Yard. It appears, however, that the Company is taking steps to install a radio system that will alleviate that concern. It is anticipated that the system will be in place by July 1, 1995. In the interim, however, adequate communications should, I think, be ensured for the purposes of general safety, having particular regard to the volume of level crossing traffic in the area.

The Arbitrator therefore directs that the Company provide to the crews working in Lulu Island a suitable system of cellular telephone communication, until such time as the new radio communication system is in place. The implementation of the material change shall be conditioned upon compliance with this condition.

May 18, 1995

(signed) MICHEL G. PICHER
ARBITRATOR