

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2662

Heard in Montreal, Wednesday, October 11, 1995

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

### **DISPUTE:**

Operation of the Typhoon Washer work assigned to a mechanic.

### **JOINT STATEMENT OF ISSUE:**

Early in 1991 the Company installed a multimetal Typhoon Washing Machine. On April 24, 1991, the Company approached the CBRT&GW and asked the Union to canvass its members to operate this new machine, which resulted in the position being assigned to an employee of the Agreement 5.1 bargaining unit on April 25, 1991. On April 30, 1991, the position was reassigned to a machinist.

It is the Union's position that the reassignment was a result of a complaint launched by the IAM. Furthermore, Agreement 5.1 had been altered inserting Article 28.6(b), which established the position of Steam Cleaner, providing an additional 25 cents per hour as compared to the Classified Labourer position. This, in itself, was an agreement that such work was to be performed within the boundaries of the 5.1 bargaining unit.

The Company denied the grievance on the basis that there had been no violation of the collective agreement.

### **FOR THE BROTHERHOOD:**

**(SGD.) J. D. HUNTER**

**FOR: NATIONAL VICE-PRESIDENT, CBRT&GW**

### **FOR THE COMPANY:**

**(SGD.) M. M. BOYLE**

**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

J. D. Pasteris – Manager, Labour Relations, Montreal  
D. Baril – System Labour Relations Officer, Montreal  
F. Richards – Equipment Services Officer, Winnipeg

And on behalf of the Union:

D. Olszewski – National Representative, Winnipeg

### **AWARD OF THE ARBITRATOR**

Although it is not apparent from the Joint Statement of Issue, the instant dispute stems from the introduction of two Proceco multimetal washing machines into the Motive Power Shop at Transcona. The larger of the two machines has the capacity to clean engine blocks while the smaller of the two cleans less bulky diesel locomotive components, many of which were previously cleaned in a six stage washer.

The instant dispute arises because previous to the introduction of the Proceco machines the cleaning of engine blocks was done by members of the Union's bargaining unit in the classification of Classified Labourers and Steam

Cleaners. The payment of that work was dealt with under article 28.6(a) and (b) of the collective agreement which provides as follows:

**28.6 (a)** Employees in the Equipment Department required to perform whitewashing work, assist in sandblasting operators or clean locomotive parts in lye baths, shall be compensated for the time so occupied at their regular rate of pay, but not less than the minimum rate for classified labourers.

**28.6 (b)** Positions of Steam Cleaners shall be established in the Equipment function, providing an additional 25 cents per hour as compared to Classified Labourers (28.6(a)).

It does not appear disputed that at or about the same time the Company introduced the Proceco washing machines into the shop, three positions involving steam cleaning functions at Transcona were abolished. It should be noted, however, that the Company served an article 8 notice in respect of the abolition of those and other positions, and that no dispute in respect of the regularity of the Company's action in that regard is before the Arbitrator in the instant case. The sole issue here in dispute is whether the Union can assert a right to have its members exclusively operate the Proceco washing machines.

The record discloses that for the first five days of the introduction of the machines they were assigned to be operated by a member of the Union's bargaining unit. It appears that from April 25 to April 30, 1991 bargaining unit member Ron Bach was assigned to operate a Proceco washing machine. However, on April 30, 1991, apparently as a result of an objection taken by another bargaining agent, the work was assigned to a member of what was then the machinists' union, (IAM). Mr. Gary Porter, a machinist's helper, continues to perform the work to the present, albeit under another bargaining unit of the successor Union which now carries this grievance.

The evidence discloses that Proceco washing machines have been introduced elsewhere in Canada by the Company. It appears that an agreement was reached with the Union to allow its members to operate Proceco washers at the Gordon Yard Diesel Shop in Moncton. On the other hand, the operation of Proceco washers at MacMillan Yard, in Toronto, is apparently assigned to both machinists and classified labourers. Further, the Company notes that at the Transcona Main Shop a number of different types of washing machines such as, for example, diesel box washers, axle washers, diesel wheel washers and truck washers are operated by employees who are not in the bargaining unit, including machinists' helpers, electricians, pipefitters and carmen. The Company also stresses that the Proceco washing machine is in many ways analogous to the six stage washer which, it notes, was previously loaded and unloaded by a machinist's helper. It does not appear disputed that that washer dealt with the cleaning of many locomotive components which are now handled by the Proceco machine.

In the Arbitrator's view the instant grievance cannot succeed. Clearly, if it could be shown that for the bulk of his working time the machinist's helper assigned to the Proceco washer performs little more than the duties previously performed by classified labourers and steam cleaners, it could be found that he must be treated as falling within the bargaining unit. With the greatest respect to the Union's position, however, the facts do not disclose that that is so. In my view it is more accurate to say that the Proceco washer itself performs many of the tasks previously done by steam cleaners, particularly as relates to the cleaning of engine blocks. In effect, the Company has automated a function previously performed by bargaining unit members. Save for the introductory period of five days, the operation of the Proceco washer itself was never performed by any member of the bargaining unit, since the machine was newly introduced at the time giving rise to this grievance.

How then can it be said that the operation of that machine is itself bargaining unit work? In the Arbitrator's view, quite apart from issues of work ownership, dealt with below, the instant case is somewhat analogous to **CROA 2191**. That case involved a jurisdictional dispute between the Brotherhood of Locomotive Engineers and the United Transportation Union in respect of the right to operate yard engines by means of a remote control "belt pack", an assignment which the Company gave to the members of the UTU. In that case this Office declined the grievance brought by the Brotherhood of Locomotive Engineers reasoning, in part, as follows:

... The evidence raises substantial doubt with respect to the assertion of the Brotherhood that the yard operations employee is "handling" a locomotive in the sense that a locomotive might be handled in manual operations by a locomotive engineer. The manual operation of a locomotive requires a high degree of skill and training, including the ability to read gauges and manipulate throttle and braking functions as required by changing circumstances and conditions. Under the automated process, locomotive handling is not performed in any meaningful sense by the operator

of the belt pack. For the reasons touched upon above, it is the microprocessor which automatically makes the necessary adjustments to ensure the proper operation of the locomotive. While it is true that the yard operations employee can determine the speed and direction of the train by means of the belt pack, much as she or he previously did by radio communication with the locomotive engineer, it cannot be said that the yard operations employee is handling or operating the locomotive with anything approaching the degree of control and refinement previously exercised by a locomotive engineer. In my view it is more accurate to say that the locomotive engineer's position has been abolished and that that employee has been replaced by a microprocessor and interface system which automatically performs the functions previously assigned to the locomotive engineer. At most, the job of moving the locomotive has, to borrow Judge Anderson's phrase, been de-skilled to the point where the locomotive engineer's function has been eliminated.

... The yard operations employee does not, in my view, truly operate or handle the locomotive. He or she does not perform the functions traditionally assigned to a locomotive engineer. Those functions are automated and are now performed by the microprocessor unit upon commands initiated by the yard operations employee through the belt pack. While the analogy may not be perfect, it seems to the Arbitrator that the yard operations employee using the belt pack is no more responsible for the work of a locomotive engineer than a person who now makes a directly dialed long distance call on a digital telephone can be said to be performing the tasks of a long distance telephone operator. It is in fact an automated system which has taken over the core functions of the job which was abolished.

When the above analysis is applied to the case at hand, it is more accurate to say that the Proceco washer has taken over certain of the functions previously performed by steam cleaners. It does not appear disputed that its automated systems allow it to clean an engine block completely, in something approaching one quarter of the time which was previously required by the use of classified labourers and steam cleaners utilizing entirely different equipment and tools. It cannot be found, on the evidence before me, that the work previously performed by classified labourers and steam cleaners has been transferred into the hands of the machinist's helper who loads and operates the washer. On that basis the grievance cannot succeed.

In the alternative, and more fundamentally, the grievance cannot succeed to the extent that the Union cannot assert ownership of the work in question. As noted above, the operation of Proceco washing machines is relatively newly introduced into the workplace, and cannot be said to have been work performed traditionally by members of the bargaining unit although, as noted above, the machine itself does accomplish work of a type previously assigned to classified labourers and steam cleaners. In **CROA 2237** this Office had cause to consider a long line of jurisprudence which confirms that collective agreement 5.1 does not contain exclusive work ownership protections. In that award the following comments appear:

... [T]he Brotherhood cannot assert jurisdictional possession of bargaining unit work, save where it can be established that the work of non-bargaining unit personnel falls entirely within the bargaining unit in the sense that the persons so engaged must be treated as being under the collective agreement. (*See CROA 117, 118, 246, 322, 381, 693, 1160, 2006.*)

Bearing in mind that the collective agreement is national in scope and that at Transcona, as well as a number of other locations, the operation of washing machines similar to the machine which is the subject of this grievance, as well as the operation of the Proceco machine itself, is done by employees outside the bargaining unit, it cannot be asserted that the work in question falls entirely within the scope of the Union's collective agreement. There is, very simply, no provision within the agreement which would limit the ability of the Company to assign the work in question to persons other than members of the Union's bargaining unit.

For all of the foregoing reasons the grievance must be dismissed.

October 13, 1995

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