CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2719

Heard in Montreal, Wednesday, 10 April 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

DISPUTE:

Alleged violation of Article 79 of Agreement 4.16.

JOINT STATEMENT OF ISSUE:

The Moncton downtown main yard was relocated outside town to a newly built "Hump Yard" in 1960. An agreement dealing with the adverse effects on the employees was reached on September 29, 1960.

By letter dated March 29, 1993, the Company advised the Union that effective April 30. 1993, the practice of paying two road miles in excess of those actually run to train service employees between Moncton and the terminals of Edmunston and Campbellton would cease.

The Union contends that the provisions of the 1960 agreement cannot be changed without prior discussion and negotiations as it would otherwise be in violation of Article 79 of Agreement 4.16.

The Union requests that the affected employees be made whole for any loss of earnings incurred as a result of the Company's violation.

The Company denies the alleged violation.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) R. LEBEL	(SGD.) D. W. COUGHLIN
GENERAL CHAIRMAN	for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:
O. Lavoie – Labour Relations Officer, Montreal
J. D. Pasteris – Manager, Labour Relations, Montreal

And on behalf of the Council:
R. LeBel – General Chairperson, Quebec
J-C Levesque – Local Chairman, Edmunston

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that in 1960 the Company implemented substantial changes in the location and configuration of switching facilities at Moncton, with the opening of a new hump yard. The parties then negotiated an agreement reflected in a letter of then Superintendent, Transportation D.W. Blair, dated September 29, 1960, which reads as follows:

> Further to our meeting at Moncton on Wednesday, September 14.
>
> This will confirm the following understandings which were arrived at covering the various matters discussed in connection with the operation of our Hump Yard at Moncton:
>
> **(A)** The switching limits of the new Moncton Hump Yard are extended to Mile 4 on the Sussex Subdivision, to Odlum, Mile 4.6 on the Gort Subdivision
>
> **(B)** It is understood and agreed by all concerned that any movements of switchers beyond the switching limits at Odlum, that may become necessary account emergency conditions in the yard, will not serve as a basis for time claims
>
> **(C)** **Trip ticket mileages for crews of 7th Seniority District operating from Campbellton and Napadogan to Moncton will remain unchanged.** Trip ticket mileages on the Springhill Subdivision will increase from 124 to 129 miles from Truro to Moncton; trip ticket mileages for crews operating on the Sussex Subdivision will correspondingly drop from 86 to 81 miles
>
> **(D)** Trip ticket mileages from Fundy to Hillsboro and return will stand at 65 miles and from Fundy to Havelock and return will stand at 60 miles
>
> Will you kindly confirm the above as our mutual understanding.
>
> (emphasis added)

By letter dated October 22, 1960 the Union's General Chairman confirmed to Mr. Blair its acceptance of the terms proposed by the Company. Further confirmation is reflected in a separate letter from the Union's Vice-President, Mr. W.P. Kelly, dated October 7, 1960.

The portion of the agreement pertinent to this grievance is the first sentence of paragraph (C). It is common ground that the language which appears there confirms that employees remain entitled to an unchanged calculation of miles for train service between the locations there described, which are Moncton, Edmunston (Napadogan) and Campbellton. In the result, by the agreement, employees were to be paid two miles more than would have been their entitlement under the strict terms of the collective agreement for travel between these locations.

The Company now submits that it is entitled to depart from the arrangement described above. It gave notice to the Union on March 29, 1993 that effective April 30, 1993 the practice of paying an additional two road miles for the employees in question would cease.

The first position advanced by the Company is that there is no agreement binding it to pay the two miles in question, which can be said to be part of the collective agreement. Additionally, it argues that the original agreement was intended to minimize the adverse effect on employees then in service, and it asserts that, with the recent retirement of the last employee from that era, it is no longer required to make the payments. It also submits that the conditions for a material change are not made out in the circumstances of this case.

In the Arbitrator's view there is no need, in the instant case, to deal with the alternative position of the Union with respect to its possible entitlement to a notice of material change under the provisions of article 79 of the collective agreement. The more fundamental issue argued by the Union, which the Arbitrator deems to be the real dispute between the parties, is whether the Company is bound to the terms of the agreement which it made in 1960, and can only relieve itself from those provisions by negotiating an amendment to them with the Union, whether during the course of the current collective agreement or at the time of its renewal.

Firstly, the Arbitrator cannot sustain the position of the Company to the effect that the understanding of 1960 is somehow outside the terms of the collective agreement. It is well settled that in a collective bargaining relationship the sum total of a collective agreement may be more than what appears in the collective agreement booklet or

document published by the parties for ease of reference by employees and Company officers. A collective agreement may include a substantial variety of ancillary documents, including letters of understanding, job security agreements, supplementary agreements, insurance plans or plans in respect of pensions, and other similar documents intended to form part of the parties' collective bargaining relationship, bearing in a general way on terms and conditions of employment. (*See generally, Brown & Beatty*, **Canadian Labour Arbitration**, *para 4:1200*.)

Section 3.1 of the **Canada Labour Code** contains the following definition,

> "collective agreement" means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters.

It is well established that there may be more than a single document signed by both parties to satisfy the requirement of writing for the purposes of the **Code**. There can be an exchange of documents, or a set of documents, which, taken together, form sufficient evidence of a collective agreement, in whole or in part. (*Re* **Giant Yellowknife Mines Ltd**., *[1976] 1 Can L.R.B.R. 314 (Can.);* **Windsor Tube & Metal Inc**., *[1978] O.L.R.B. Rep. Sept. 883; Re* **Monsanto Oakville (1960) Ltd**. *(1963), 13 L.A.C. 353 (Laskin); Re* **CALFA and Worldways Canada Ltd**. *(Re) (1985), 62 di 75; Re* **Cineplex Odeon Corp. and IATSE, Loc. 348** *(Re) (1991), 11 C.L.R.B.R. (2d) 85 (B.C.)*) (*See also, Adams,* **Canadian Labour Law** *(second edition) (Aurora, 1995) at para 12.30.*)

When the foregoing principles are applied to the case at hand there can be no doubt that the Company and the Union entered into binding terms and conditions of employment, intended to form part of their collective agreement, in late September and early October of 1960. Their agreement was sufficiently reduced to writing and remains enforceable by either party, until such time as it is mutually amended or rescinded. There is clearly no evidence of an amendment or rescission of the agreement by negotiation or understanding between the parties. There is, in other words, no basis upon which to accept the suggestion of the Company that the terms of the agreement do not form part of the collective agreement.

Nor can the Arbitrator find anything in the language of the agreement to suggest that it was intended to provide grandparenting rights which would inure only to the benefit of employees who were in place at the time the agreement was negotiated in 1960 or, alternatively, that if the agreement was to have general application to all employees, it was to terminate with the retirement of the last employee who was in service at the time it was negotiated. The parties to this agreement are experienced in collective bargaining, and would have no difficulty fashioning appropriate language to convey either of those two intentions. However, no such language is apparent on the face of the documents which constitute the terms of this agreement. On the contrary, the provisions of paragraph (C) of the letter of September 29, 1960 are straightforward, unequivocal and unqualified. They provide clearly that crews of the 7th Seniority District are to have the benefit of trip ticket mileages unchanged, notwithstanding the location of the then new Moncton Hump Yard.

In the result, the Arbitrator is satisfied that the letter of September 29, 1960, whose terms were accepted in writing by the Union's officers, forms part of the collective agreement of the parties, and that the unilateral action of the Company in purporting to terminate the payment for the two miles in question is in violation of the Company's collective agreement obligations. While it remains open to the Company to seek to obtain an amendment or cancellation of this agreement by proper negotiation with the Union, whether during the term of the collective agreement or at the time of its renewal, any such amendment or cancellation must be by mutual consent. In light of the foregoing findings there is no need for the Arbitrator to deal with the alternative submission of the Union with respect to a possible violation of article 79 of the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the Company compensate all employees affected by the Company's action since May 1, 1993, by providing payment for the two road miles for crews which have operated trains between Moncton-Edmunston, Edmunston-Moncton and Moncton-Campbellton and return. Any dispute with respect to the computation of compensation may be spoken to.

April 12, 1996

(signed) MICHEL G. PICHER
ARBITRATOR