

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2842

Heard in Montreal, Tuesday, April 8 1997

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION**

### **DISPUTE:**

The abolition of eight (8) non-essential assistant conductor positions in the 11th seniority district.

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

On May 9, 1996, the Company advised the Union that eight (8) non-essential assistant conductor positions in the 11th seniority district would be abolished in accordance with Note 3 of article 27.6(d) of agreement 4.16.

The Union alleges that the Company has violated the terms of Annex 14 of the agreement of May 5, 1995 and basing the abolition of these positions on the provisions of article 27.

The Union claimed the re-establishment of the eight (8) non-essential positions.

The Company rejected the request of the Union.

### **FOR THE UNION:**

**(SGD.) R. LEBEL**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) A. E. HEFT**  
**FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

J. D. Pasteris	– Manager, Labour Relations, Montreal
D. Parent	– Coordinator - Operations, Montreal
O. Lavoie	– Officer - Transport, Montreal

And on behalf of the Union:

R. LeBel	– General Chairman, Quebec
J. Beauchemin	– Vice-General Chairman, Mont-Joli
B. E. Wood	– General Chairman, BLE, Bedford, Witness
J. Collet	– Local Representative, Montreal
A. Couturre	– Local Representative, Quebec
R. Bélanger	– Local Representative, Edmunston
J-C Levesque	– Local Representative, Edmunston
L. Cantin	– Local Representative, Quebec
R. Beaudoin	– Member, Quebec

## **AWARD OF THE ARBITRATOR**

The evidence establishes that eight engine service employees who were assigned in train and switching service were promoted into permanent positions as locomotive engineers. Those promotions followed the departure of an equivalent number of locomotive engineers of the 2nd seniority district. These latter took advantage of early retirement opportunities, in accordance with the terms of the agreement of May 5, 1995 and of the agreement of August 2, 1995. Therefore, the Company eliminated eight positions of assistant conductors which were non-essential, basing this on article 27.6(d) of the collective agreement which reads as follows:

**27.6 (d)** One assistant conductor's position on such assignments or in such pools or sets of runs will be discontinued for each protected employee removed from the active working list other than by discharge or by promotion to an excepted position, either permanent or temporary, or by temporary promotion to traffic coordinator or locomotive engineer.

The Arbitrator cannot accept the claim of the Union to the effect that the employer's actions were made in bad faith, or going against the intention of the agreement of May 5, 1995 which gave certain concessions to the Company concerning the operation of its business east of Joffre.

As a first principle, the Arbitrator must conclude that article 27.6(d) represents a rule of general application as it concerns the assignments or groupings of non-essential assistant conductors. That article delineates the circumstances in which the Company can abolish a position of assistant conductor. There is nothing in the wording of article 27.6(d) which prohibits the Company from abolishing positions by reason of the permanent promotion of a number of employees, given that they are then struck from the list of active assistant conductors.

Certainly, the parties had the ability to negotiate exceptions to the general rule, above all within an agreement which involves such broad changes affecting employees. For example, at the time of the introduction of the belt-pack, the parties agreed to exclude the abolition of non-essential positions, as is apparent from Appendix K, dated November 1, 1995:

This is in reference to our discussions governing the introduction of Belt Pack technology and the impact on Appendix 2 of the respective Conductor Only Agreements and non-essential Assistant Conductors' positions.

The parties have agreed that separations resulting from the introduction of Belt Pack technology will not reduce the potential number of retirement opportunities as outlined in Appendix 2 of the Conductor Only Agreements, and furthermore, will not reduce the number of non-essential Assistant Conductor's positions.

However, there is no such similar protection negotiated for non-essential positions in the wording of the agreement of May 5, 1995. In the circumstances, the Arbitrator must come to the conclusion that the Company is correct and that article 27.6(d) of the collective agreement applied. Therefore, there was no violation of the terms of the collective agreement. For these reasons, the grievance must be dismissed.

April 12, 1997

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