CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2893

Heard in Montreal, Wednesday, 15 October 1997

concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Claim by the Union that the Company violated article 53 of agreement no. 8 by failing to serve prior notice to removing a yard assignment in the Englehart home station.

BROTHERHOOD'S STATEMENT OF ISSUE:

On February 14, 1996 the Company posted a notice on all bulletin boards announcing changes in the Rail Freight operations. The three trains a day made up in Englehart would then be made up in North Bay operating through Englehart to destination. This would result in the loss of one yard assignment in Englehart.

On February 15, 1996 the Brotherhood requested notice in accordance with article 54 of agreement no. 8 in order to negotiate measures to minimize the adverse effects on those affected by the change.

On March 8, 1996 the Company advised the Brotherhood that the necessary changes would be made on the bulletin advertising the Spring Change of Timetable.

On March 27, 1996 the Brotherhood appealed the matter to Step 3.

On April 16, 1996 the Company posted bulletin B-1 reflecting the introduction of the new freight operation and the loss of one yard assignment in Englehart.

On December 15, 1996 the Company denied the Brotherhood's March 27 appeal.

COMPANY'S STATEMENT OF ISSUE:

On April 16, 1996 the Company posted bulletin E-1, in accordance with article 41 of the collective agreement, advertising, among other assignments, one yard assignment at the Englehart Yard, to operate 1300 to 2100 hours daily, with Saturday and Sunday as rest days. Previous to this bulletin, there had been two yard assignments at Englehart Yard.

The Brotherhood initiated a policy grievance contending that the Company could not reduce the number of yard assignments without serving notice to the Union under article 53 of the collective agreement. The Union requested the Company meet with the Union to negotiate measures to minimize the adverse affect of the change in assignments.

The Company contends that there was no violation of the collective agreement provisions in the manner in which the assignments were re-bulletined and denied the Brotherhood's request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) B. E. WOOD	(SGD.) J. D. KNOX
GENERAL CHAIRMAN	

There appeared on behalf of the Company:
M. J. Restoue – Manager, Labour Relations, North Bay
J. Thib – Superintendent, Train Operations, North Bay

And on behalf of the Brotherhood:
B. E. Wood – General Chairman, New Bedford

AWARD OF THE ARBITRATOR

The instant grievance arises under the terms of article 53 of the collective agreement, which concerns the introduction of run-throughs, changes in home stations or material changes in working conditions. The provisions of the article pertinent to this grievance are as follows:

> **53.1** Prior to the introduction of run-throughs or changes in home stations or of material changes in working conditions which are to be initiated solely by the Railway and would have significantly adverse effects on engineers, the Railway will:
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> **(a)** negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay, and
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> **(b)** give at least six months' advance notice to the Brotherhood of any proposed change, with a full description thereof along with details as to the anticipated changes in working conditions. While not necessarily limited thereto, in the case of run-throughs, and the case of other changes where applicable, the matters considered negotiable will include the following:
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> **1.** Appropriate timing
> **2.** Appropriate phasing
> **3.** Hours on duty
> **4.** Equalization of miles
> **5.** Work distribution
> **6.** Appropriate accommodation
> **7.** Bulletining
> **8.** Seniority arrangements
> **9.** Learning the road
> **10.** Use of attrition
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> ...
>
> **(i)** The changes proposed by the Railway which can be subject to negotiation and arbitration under this article do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which engineers are engaged.

It is common ground that in February of 1996 the Company announced certain changes in freight operations. As a result of the adjustment announced, trains were to be made up in North Bay for through runs to Noranda, Cochrane and Kidd. The trains in questions were therefore no longer to made up at Englehart, as had previously been the practice. It also appears that the Englehart Mechanical Repair facility was closed, a fact did which did lead the Company to give a material change notice to the affected bargaining agent. It is common ground that there was no closure of any terminal, nor any effect on the home terminals for any employees, as Englehart remained a crew change point. The impact of the change, as relates to running trades employees, was the elimination of a yard assignment at Englehart with the spring change of timetable in 1996.

In the Arbitrator's view the issue in the case at hand is whether the change which was implemented by the Company can be said to be a material change in the sense contemplated by article 53 of the collective agreement or whether it is better characterized, as the Company argues, as falling within the exception in sub-paragraph (i), as a "reassignment of work at home stations or other normal changes inherent in the nature of the work in which engineers are engaged." Upon a review of the facts of the instant case, and of the jurisprudence, the Arbitrator is

compelled to accept the position of the Company that the facts of the instant case do not disclose a material change in working conditions as contemplated under article 53.

The facts at hand are not unlike those disclosed in **CROA 332**. In that case a home terminal of certain wayfreight trains was changed from Owen Sound to Stratford, Ontario. And, similarly, the home terminal for the assignment of other trains was changed from London to Ingersoll, Ontario. Arbitrator Weatherill concluded that the collective agreement contemplates the bulletining the assignments at stated intervals, and in cases of changes of assignment. He found that such changes must be characterized as being "normal changes" inherent in the work of locomotive engineers, even though they might not be every day occurrences. A similar conclusion was arrived at by Arbitrator Kates in **CROA 1444**, which involved the relocation of the home terminal of a wayfreight assignment from Lanagan to Prince Albert, Saskatchewan, at the change of time in the spring of 1985.

In the Arbitrator's view, while the precedent cases care not precisely the same as to their facts, the principles which they reflect do properly apply to the case at hand. In this case the trains previously made up by a yard crew at Englehart are to be made up in North Bay. Other road and yard assignments remain available at Englehart, although one yard assignment was eliminated at the change of timetable in the spring of 1996, as a result of the administrative adjustment made by the employer. In my view, in light of the prior jurisprudence reviewed above, the adjustments implemented by the Company are well within the contemplation of sub-paragraph (i) of article 53, involving as they do a reassignment of work at home stations and changes which are normal and inherent in the nature of the work of locomotive engineers. Moreover, it is not entirely clear to the Arbitrator that there has in fact been any adverse impact on any employee at Englehart. In a case of this kind it is incumbent upon the Brotherhood to show an actual loss of work opportunities, and/or a real loss in earnings potential, to an employee by reason of the alleged material change. No such evidence of a concrete nature is adduced before the Arbitrator in the instant case. For its part, the Company submits that in fact there has been no real reduction in work opportunities to any employees at Englehart. More fundamentally, however, as elaborated above, what has occurred is not a material change within the meaning of article 53 of the collective agreement.

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

October 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR