

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2964

Heard in Montreal, Tuesday, 14 July 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

and

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

(Intervenor)

DISPUTE:

The Company's bulletining of Transportation positions in Turcot Yard Montreal, following the abolishment of unionized CAW 5.1 positions.

JOINT STATEMENT OF ISSUE:

The Company issued notice to the Union concerning the abolishment of four Train Movement Clerk positions in Turcot Yard. The notice was issued pursuant to article 8 of the Employment Security and Income Maintenance Agreement.

Identified in the fall 1997 change of card process, was the relocation of a Traffic Coordinator's position from Pt. St. Charles Yard to Turcot Yard, and the establishment of a second Traffic Coordinator position as being permanent, rather than temporary.

The Union contends these transportation positions fall within the scope of the 5.1 agreement, therefore violating articles 2.1, 3.1, 12.1 and 12.3. The Union seeks declaration to this effect. In resolution of the matter, the Union requests these positions be re-bulletined as described in article 12.1, and any adversely affected employee be made whole, and the Union be made whole for any losses.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) R. JOHNSTON
NATIONAL PRESIDENT

FOR THE COMPANY:

(SGD.) A. E. HEFT
for: SR. VICE-PRESIDENT, LINE OPERATIONS

There appeared on behalf of the Company:

- F. O'Neil – Labour Relations Officer, Montreal
- O. Lavoie – Transportation Officer, Montreal
- S. MacDougald – Manager, Labour Relations, Montreal
- K. Laviolette – Assistant Manager, Labour Relations, Montreal
- D. Boucher – Assistant Superintendent, Transport, Montreal

And on behalf of the Union:

- A. Rosner – National Representative, Montreal
- D. Boucher – Train Movement Clerk, Montreal
- J. Savard – Member of Negotiating Committee, Montreal
- J. Lamoureux – Witness

And on behalf of the Intervenor:

R. J. Long

– General Chairperson, CCROU(UTU), Brantford

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms, as the Union submits, that certain functions previously performed by Train Movement Clerks at Turcot Yard are now being performed, in part, by Traffic Coordinators, formerly known as Yardmasters. The evidence discloses that for approximately 48% of the working week two traffic coordinators work side by side in the Turcot Tower, in circumstances where previously a train movement clerk would have worked with a traffic coordinator. Further, there is no dispute that the traffic coordinators at Turcot Yard do certain computer and clerical functions previously performed by the train movement clerks, including SRS computer functions involving Make Train, Switch, Line-up and a variety of tasks referred to as SS functions. The traffic coordinators are also involved in a degree of verification and monitoring which, to a certain extent, overlaps into functions previously performed by train movement clerks.

The Union does not argue that it can claim exclusive work jurisdiction in respect of the jobs in question. Rather, it submits that the second traffic coordinator assigned to the tower performs functions which are so substantially the same as those previously performed by train movement clerks as to bring the individuals so assigned within the bargaining unit of the Union. In so pleading, it relies on principles elaborated in **CROA 2006, 2149, 2279 and 2403**. The principle is summarized in the following terms in **CROA 2006**:

... [I]n some circumstances the creation of a job or assignment which involves essentially performing little more than the duties of a position falling entirely within the bargaining unit could result in a finding that the person performing the work must be treated as performing work within the bargaining unit. ...

In the Arbitrator's view the Union's claim cannot succeed, in the circumstances disclosed. The evidence reveals that the practice previously in effect at Turcot Yard, whereby traffic coordinators performed virtually none of the clerical functions of train movement clerks, is highly exceptional. The evidence provided by the Company, by the Intervenor Union, as well as by one of the Union's own witnesses, confirms, for example, that at Taschereau Yard, and indeed at many locations across Canada, with the advent of computerized functions more and more of the clerical tasks traditionally associated with train movement clerks have come to be performed by traffic coordinators. While there may have been a time, in a somewhat distant past, when train movement clerks performed clerical functions which were essentially written and manual, using "hard copy" documents, the work place reality has changed with the advent of computers and automation, resulting in the gradual development of a shared jurisdiction in respect of certain of the tasks previously performed manually by train movement clerks. In the result, as the evidence before me amply confirms, it is not uncommon in yards across Canada for traffic coordinators to themselves perform many of the disputed functions, such as make train, switch, and line-up, by the use of the SRS computer system, as they did by the use of previous generations of computer programs. Bearing in mind that the collective agreement at hand governs a national bargaining unit, notwithstanding the somewhat different idiosyncrasies which may have obtained at Turcot Yard, the *status quo* prior to the changes implemented at that location, across the bargaining unit, was that of a shared jurisdiction as between train movement clerks and traffic coordinators in respect of the functions which are the subject of this dispute.

Further, the evidence before the Arbitrator does not disclose that the second traffic coordinator at Turcot Yard necessarily devotes the majority of his or her time to functions previously associated with the train movement clerks. While it is conceded that in some circumstances, particularly on a busy day, the tasks performed by the second traffic coordinator may virtually all correspond to what was previously work performed by train movement clerks, on other days it is assessed as being as little as twenty minutes to one-half hour of the second traffic coordinator's paid working time. In the result, unlike **CROA 2169**, this is not a case where the evidence establishes that the core functions of the second traffic coordinator necessarily overlap absolutely the core functions of the train movement clerk. Secondly, as noted above, the instant case becomes the more difficult for the Union, to the extent that in any event the practice and automation introduced in recent years has developed a shared jurisdiction in respect of the work in question, a circumstance which would, in any event, allow the Company certain discretion in the assignment of the work, in respect of which the Union cannot claim a proprietary interest.

For all of the foregoing reasons the grievance is dismissed.

July 17, 1998

(signed) MICHEL G. PICHER
ARBITRATOR