CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2973

Heard in Montreal, Wednesday, 9 September 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

EX PARTE

DISPUTE:

Interpretation and application of article 79 of the 4.16 agreement with respect to train 590 at Brockville, Ontario.

EX PARTE STATEMENT OF ISSUE:

Subsequent to the spring change of time in 1996, Road Switcher 590 was abolished and re-advertised as a way freight. The Union filed a policy grievance stating that the Company should have served a material change notice under the provisions of article 79.

The Company responded to the Union's grievance and declined the grievance.

FOR THE COUNCIL:

(SGD.) N. MATHEWSON
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

P. Marquis	– Labour Relations Officer, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
G. G. Wolnarski	– Assistant Superintendent, MacMillan Yard

And on behalf of the Council:

M. P. Gregotski	– General Chairperson, Fort Erie
R. Long	– General Chairperson, Brantford
G. Marsh	– Local Chairperson, Brockville
R. Dyon	– General Chairman, BLE, Montreal

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. For a number of years the Company operated a road switcher assignment, no. 590, home terminalled at Brockville. It involved running in and out and through Brockville, and within a thirty mile radius of that terminal, performing road switcher assignments. With the change of card in the spring of 1996, the Company posted a new assignment which involved the travel of train 590 beyond the thirty mile limit of a road switcher, to service the area between Prescott and Kingston, and to Morrisburg, if required. The new assignment was also said to be liable to operate on Saturday if required, as opposed to the Monday through Friday assignment of the previous 590 road switcher.

The Company came to the view that it was inappropriate to characterize the assignment as a road switcher, as it in fact travelled beyond the thirty mile limit. As a result, in July of 1996 it abolished road switcher 590 and re-advertised the same numbered train as a way freight, commencing July 7, 1996. In the result, crews assigned to the newly established way freight were subject to the lower rates of pay appropriate for way freight service, augmented by certain premiums which attach to it.

The Council submits that the change made by the Company amounts to a material change in working conditions having materially adverse effects on employees, and that the Company was therefore under the obligation to give the notice and follow the procedures provided for within article 79 of the collective agreement, which governs material changes in working conditions. The Company denies that the adjustment in assignment 590 constitutes a material change within the meaning of article 79.

It is common ground that the train normally departs Brockville, proceeds eastward to Prescott as the first part of its assignment. Thereafter, it reverses direction and passes back through Brockville enroute to Kingston, prior to returning to Brockville at the conclusion of its service. The Council argues, in part, that there is no provision within the collective agreement for the Company to run assignment 590 as a way freight which moves in, out and through the home terminal of Brockville during its normal assignment. The Council's representative submits that such an assignment is inappropriate in way freight service. He maintains that the Company should have properly bulletined the continuation of assignment no. 590 as a road switcher as provided under note 2 of article 2.1 of the collective agreement which reads as follows:

> **NOTE 2:** Except for way freight rates of pay, conditions applicable to through freight service will apply to Switcher service which is defined as service wherein:
>
> **(a)** way freight rates normally apply (as provided by article 15 Conversion Rule); and/or
>
> **(b)** where applications for Switcher service are requested by bulletin and where such service operates outside of the 30-mile radius as specified by paragraph 12.2.

Article 12.2 provides that initial and final terminal time are not to apply to employees in road switcher service, save for certain enumerated exceptions.

The fundamental question to be resolved is whether, as the Council contends, the alteration of assignment 590 constitutes what the parties intend as a material change in working conditions within the meaning of article 79 of the collective agreement. With this aspect of the Council's case the Arbitrator has substantial difficulty. Article 79 provides, in part, as follows:

> **ARTICLE 79**
> **MATERIAL CHANGES IN WORKING CONDITIONS**
> **79.1** The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairperson concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon the employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with this paragraph.
>
> **(a)** the Company will negotiate with the Union measures other than the benefits covered by paragraphs 79.2 and 79.3 to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in

Agreement provisions considered necessary for the implementation of a material change is also subject to negotiation;

(b) while not necessarily limited thereto, the measures to minimize adverse effects considered negotiable under sub-paragraph (a) of this paragraph may include the following:

(1) Appropriate timing
(2) Appropriate phasing
(3) Hours on duty
(4) Equalization of miles
(5) Work distribution
(6) Adequate accommodation
(7) Bulletining
(8) Seniority arrangements
(9) Learning the road
(10) Eating en route
(11) Working en route
(12) Layoff benefits
(13) Severance Pay
(14) Maintenance of basic rates
(15) Constructive miles
(16) Deadheading

The foregoing list is not intended to imply that any particular item will necessarily form part of any agreement negotiated in respect of a material change in working conditions.

…

(k) WHEN MATERIAL CHANGE DOES NOT APPLY
This article does not apply in respect of changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional reassignments of work or other normal changes inherent in the nature of the work in which employees are engaged.

Article 79 further provides for the negotiation of terms and conditions to minimize the adverse effects of a material change upon employees, with arbitration as a final and binding mechanism for impasse resolution.

As can be seen from the scope of article 79 of the collective agreement, which also includes extensive provisions governing relocation expenses and early retirement allowance, the provision is intended to deal with Company initiated actions which have substantially negative impacts, generally touching the job security of employees. An adjustment in the type of assignments at a location does not, however, necessarily qualify as a material change within the meaning of article 79. This Office has found, for example, that changing the home terminal of an assignment does not constitute material change (**CROA 332**). Neither did the introduction of flying crews, which eliminated certain yard movement premiums at Montreal (**CROA 1167**). It also has been found that the change of home terminal for an assignment falls within the exception of a "traditional reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged" (**CROA 1444**). The same conclusion was drawn where a company reorganized and eliminated certain yard assignments to achieve greater efficiencies (**CROA 2893**). Similarly, it was found that the addition of certain loading tasks assigned to conductors at a mine loading facility did not constitute a material change in working conditions (**CROA 2696**).

When the facts of the instant case are examined closely, what has transpired is an adjustment in the Brockville based assignment, apparently for the purpose of achieving greater efficiencies. Running assignment 590 beyond the thirty mile limit, as a way freight, would allow the Company to have the advantage of the lower wage rates payable for way freight service, although it appears arguable that certain additional premiums available to that type of service might in fact bring additional earnings to the employees affected. While the parties are not precisely agreed as to whether there is a financial advantage or disadvantage to the employees concerned, I do not consider it necessary to resolve that issue for the purposes of this dispute. Plainly, there has been no loss of employment or reduction of overall work opportunities for the employees home terminalled at Brockville. While there may be some adjustment in their earnings by the substitution of the way freight for the road switcher, it appears to the Arbitrator that such a change falls within the ambit of the exception to article 79 of the collective agreement, as involving a

reassignment of work or other normal change inherent in the nature of the work of running trades employees. If it were necessary to so find, I would conclude that the evidence before me does not, in any event, establish that employees were impacted by "materially adverse effects" within the meaning of article 79 of the collective agreement. This is simply not the kind of change in respect of which the parties fashioned the elaborate and extensive provisions of article 79, up to and including relocation expenses and early retirement allowances.

Nor can the Arbitrator sustain the suggestion of the Council's representative, to the effect that the Company was required, by reason of the wording of note 2 to article 2.1, to negotiate a new road switcher arrangement beyond the thirty mile radius. What the note appears to provide is that conditions applicable to through freight service are to apply to road switcher service where such service operates outside a thirty mile radius. That provision does not, of itself, compel the Company to pursue that option. Nor, on the material presented, can I find any violation of the provisions of the collective agreement with respect to the fact that the newly established way freight proceeds initially to Prescott and thereafter doubles back through Brockville enroute to Kingston, before returning to the home terminal of Brockville at the end of its assignment. Such a movement is not inconsistent with others considered by this Office, and found to be appropriate as a single assignment (see, e.g., **CROA 197, 204, 208, 362, 835** and **2904**).

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

September 11, 1998

(signed) MICHEL G. PICHER
ARBITRATOR