

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2981

Heard in Montreal, Wednesday, 14 October 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

Abolishment of train 577.

COUNCIL'S STATEMENT OF ISSUE:

On 16 December 1996, the Company issued a bulletin stating that on the completion of train 577 on 19 December 1996, this assignment would be abolished.

The Union filed a policy grievance dated 23 December 1996 stating that the abolishment of this assignment was in violation of article 79 of the 4.16 agreement and requested that the Company issue the proper notice under the Material Change article (79).

The Company disagrees with the Union's appeal.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

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

And on behalf of the Council:

M. P. Gregotski	– General Chairperson, Fort Erie
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AWARD OF THE ARBITRATOR

It is common ground that train 577 was a road switcher assignment operating within a thirty mile radius of Vandewater Yard in Windsor, Ontario which was previously operated by the Canada Southern Railway Company (CASO), a subsidiary of Conrail. In 1985 the Company purchased several pieces of territory from Conrail, including the CASO subdivision where train 577 operated. The CASO employees then transferred into the service of the Company, with seniority only as the date of the purchase from Conrail, albeit with certain preferential homestead rights in respect of continuing assignments over the former CASO territory.

On December 16, 1996 the Company gave notice by bulletin that as of December 19 train 577 would be abolished. According to the Company's representatives it was determined that it was more efficient to cover the work previously performed by roadswitcher 577 by assigning it to another roadswitcher, train 570.

The Council alleges that what transpired was a material change within the terms of article 79 of the collective agreement. It submits that in the circumstances the Company was obligated to give the appropriate notice, and to negotiate terms and conditions to minimize the adverse impacts on the employees affected.

The Arbitrator cannot sustain the position of the Council in the case at hand. Article 79.1(k) of the collective agreement reads as follows:

79.1 (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:

The evidence before the Arbitrator establishes, overwhelmingly, that what transpired in the instant case was a decision by the Company to rationalize its operations in the Windsor area, as a result of a downward fluctuation in traffic. The material adduced in evidence by the Company confirms, beyond contradiction, that in 1995 the volume of traffic handled by train 577 totalled 235 cars over a one year period. In 1996 the same roadswitcher assignment dropped to 83 cars. This resulted from declines in shipments from major customers, including Cargill Ltd., Grainco, Stoney Point Co-Op and Primo Foods. In the circumstances I am satisfied that what transpired was an adjustment in assignments, caused in part by fluctuations in traffic, of a type inherent in the nature of railway work. Clearly, the Company's decision falls within the exceptions to the material change provisions of article 79, specifically elaborated within paragraph 79.1(k). Whether the Company's actions can be characterized as a violation of the residual provisions of the CASO agreement is not an issue which arises under the terms of the ex parte statement of issue filed by the Council.

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

October 20, 1998

(signed) MICHEL G. PICHER
ARBITRATOR