

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3056

Heard in Montreal, Tuesday, 8 June 1999

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Dispute concerning the permanent layoff of 65 bargaining unit positions.

BROTHERHOOD'S STATEMENT OF ISSUE:

On March 30, 1999, the Company advised the Brotherhood of its intention to permanently layoff 65 bargaining unit positions. The position taken by the Company is that this reduction in manpower does not constitute a technological, operational or organizational change for the purposes of article 8 of the Job Security Agreement and that, therefore, no article 8 notice will be issued and no employment security benefits will be forthcoming. The Brotherhood disagreed and a grievance was filed.

The Union contends that: **1.)** The Company's actions are in violation of article 8.1, article 7.2, article 7.14 and definition (m) of the Job Security Agreement. **2.)** The Company's actions are in violation of sections 15.1, 16.3, 25, 31, 32.2 and Appendix "A" of Agreement No. 41.

The Union requests that the proposed layoff of the workers be ordered cancelled and that it be declared that the situation falls squarely within the scope of article 8.1 of the Job Security Agreement. The Brotherhood also requests an order returning all affected employees (including employees who resigned or retired as a result of this Company action) to their former positions and that the said employees be compensated for all losses, including wages and expenses, incurred as a result of this matter. It is further requested that damages be ordered paid to any affected employee who has suffered an adverse impact to family or to quality of life as a result of this matter.

COMPANY'S STATEMENT OF ISSUE:

On March 30, 1999, the Company advised the Brotherhood via conference call of its intention to permanently layoff 65 bargaining unit positions. The Company argues that such a reduction was done in accordance with article 15.1 of Wage Agreement 41 and that it does not constitute a technological, operational or organizational change for the purposes of article 8 of the Job Security Agreement. Therefore an article 8.1 notice was not required and employment security benefits will not be forthcoming. A grievance was filed by the Brotherhood on this matter and subsequently denied by the Company.

The Company contends that: **1.)** The grievance was improperly submitted and should be denied on that basis alone. **2.)** If the grievance is found to be valid, the Company would submit that these reductions were made in accordance with the relevant provisions of the collective agreement and Job Security Agreement.

The Company requests that the grievance be denied in its entirety.

FOR THE BROTHERHOOD:**(SGD.) J. J. KRUK****SYSTEM FEDERATION GENERAL CHAIRMAN****FOR THE COMPANY:****(SGD.) R. M. ANDREWS****FOR: VICE-PRESIDENT, ENGINEERING SERVICES**

There appeared on behalf of the Company:

D. E. Freeborn	– Labour Relations Officer, Calgar
E. J. MacIsaac	– Labour Relations Officer, Calgary
R. M. Andrews	– Manager, Labour Relations, Calgary
S. J. Samosinski	– Director, Labour Relations, Calgary
M. Waites	– Vice-President & Controller, Calgary
J. C. Presley	– Director, STL&H

And on behalf of the Brotherhood:

D. W. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
K. Deptuck	– Vice-President, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. J. McCracken	– Federation General Chairman, Ottawa
G. Beauregard	– General Chairman, Atlantic Region

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not in dispute. On March 30, 1999 the Company gave the Brotherhood notice of its intention to abolish some sixty-five bargaining unit positions. It is common ground that eight of those positions were eventually treated as being the result of an operational or organizational change, in relation to which the employees concerned were treated pursuant to a notice under article 8.0 of the Job Security Agreement. The balance of the employees, however, being fifty-seven in number, received a four day notice of layoff, based on the position of the Company that the abolishment of their positions was not the result of an operational or organizational change within the meaning of the Job Security Agreement. Rather, the employer maintains that the fifty-seven employees were laid off by reason of general budgetary constraints implemented as a result of a decline in traffic. The Brotherhood maintains that as the layoffs are permanent, the Company's action is tantamount to operational or organizational change, and that the employees are entitled to notice under article 8 of the Job Security Agreement, with the greater protections which flow therefrom.

Although the Brotherhood's *ex parte* statement of issue cites a number of articles from both the collective agreement and the Job Security Agreement, it is common ground that the central issue in dispute is whether the job reductions which are the subject of this grievance resulted from a technological, operational or organizational change. If they did not, the employees would properly have been laid off pursuant to article 15.1 of the collective agreement, and no other collective agreement or Job Security Agreement provisions would be violated.

The Job Security Agreement contains, in part, the following definitions found at paragraphs (m) of the definitions section:

(m) "Technological, Operational or Organizational changes" means as follows:

"Technological": the introduction by the employer into his work, undertaking or business of equipment or material of a different nature or kind than that previously utilized by him in the operation of the work, undertaking or business; or

"Operational or Organizational": a change in the manner, method, procedure or organizational structure by which the employer carries on the work, undertaking or business not directly related to the introduction of equipment or material provided that any such change is not brought about by:

(i) a permanent decrease in the volume of traffic outside of the control of the company; or

(ii) a normal reassignment of duties arising out of the nature of the work in which the employee is engaged; or

(iii) a normal seasonal staff adjustment.

Note: Any permanent shutdown or permanent partial shutdown of an operation, facility or installation, shall be considered as a Technological, Operational or Organizational change. Any permanent Company-initiated changes (excluding changes which are brought about by general economic conditions) which result from the reduction or elimination of excess plant capacity shall also be considered as Technological, Operational or Organizational changes.

The Brotherhood submits that the grievance must succeed because the Company cannot establish that the only exception which can arguably apply, in the Brotherhood's submission sub-paragraph (i), does apply. It submits that the Company has not shown that there has been a "permanent decrease in the volume of traffic outside of the control of the company". With that very central submission the Arbitrator has some difficulty.

The material tabled before the Arbitrator by the Company confirms that the Company suffered a substantial decline in revenues, being in excess of over \$200,000,000.00, from 1997 to 1998. In addition, its figures demonstrate a decline in traffic volumes leading up to the decision to implement the layoffs giving rise to this dispute. The quarter by quarter traffic volume figures, in billions of revenue tonne miles commencing with the second quarter of 1997 is as follows:

	TRAFFIC VOLUME (billion RTM)		TRAFFIC VOLUME (billion RTM)	% Reduction From Previous YEAR Period
Q2 1997	27.04	Q2 1998	25.97	- 4.0%
Q3 1997	26.93	Q3 1998	24.73	- 8.2%
Q4 1997	27.00	Q4 1998	26.17	- 2.7%
Q1 1998	25.29	Q1 1999	24.61	- 2.7%
TOTAL	106.26	TOTAL	101.48	- 4.5%

The above figures reflect an overall reduction in traffic volume of 4.5%. Notably, grain shipments are down 23.4% while coal, sulphur and fertilizer shipments are down 11.1%, due in considerable part to an overabundance of grain on world markets and a decline in the Asian economy. The data presented in evidence by the Company does, to the Arbitrator's satisfaction, establish that there was a decline in the volume of traffic leading up to the Company's decision to abolish the positions pursuant to its notice to the Brotherhood in March of 1999. It may also be noted that as between 1997 and 1998 there was a deterioration in the Company's operating ratio, in addition to an overall decline in traffic and revenue. On a year over year basis freight revenues declined by 4% from the first quarter of 1998 to the first quarter of 1999.

Based on the first quarter results of 1999 the Company made an overall decision to reduce costs across the board. Specifically, it set out to implement a \$60,000,000.00 budget reduction, including a \$10,000,000.00 reduction in travel expenses, as well as \$25,000,000.00 reductions from administration and operations, respectively. The implementation of the budget reductions resulted in a number of job abolishments system wide, including the elimination of 129 permanent management positions, 20 permanent and 500 temporary positions from the bargaining unit of the CAW, 39 permanent positions from the bargaining unit of the TCU and 3 permanent positions from the bargaining unit of the IBEW.

As explained by the Company, the decision to implement the budgetary reductions required operations managers to eliminate, wherever they could, positions which were deemed least necessary. In the case of the instant bargaining unit that involved the system-wide elimination of positions in the Company's Track Maintenance or Section forces, including some machine operator positions, as well as positions in the Bridge and Building Department. In the Arbitrator's view what the evidence discloses is a difficult decision by the Company to implement a general belt tightening across the system, as a means of responding to what it perceived as a permanent reduction in traffic volumes.

This Office has had ample opportunity to consider whether a general budgetary reduction, resulting in the permanent abolishment of positions, constitutes operational or organizational change within the meaning of the Job Security Agreement. The earliest decision of which the Arbitrator is aware is **CROA 316**, a case which involved the decision of the Company to eliminate scheduled staff positions at the Vancouver Wharf Freight Office. In that case Arbitrator Weatherill rejected the Union's claim that the budgetary reductions were operational or organizational changes. He reasoned, in part, as follows:

In some cases, the abolition of a position has been held to constitute an “operational change” within the meaning of Article VIII, some of the cases being reviewed most recently in **Case No. 289**. In the instant case, the union argues that the changes here in question were only a few of a large number of such changes made by the company across the system. In support of this, reference was made to a directive issued by the company to various of its officials requiring a ten per cent reduction in clerical payroll costs. As a result of this, consideration was given to the work performed in a number of assignments, and many changes such as those in issue here were made.

The fact that such a review was made in response to a general directive from a central authority does not require the conclusion that the results of such review constituted operational or organizational changes. It was the company’s response to the union’s original complaint about the reduction in expenses that it was a response to a decline in general business conditions. Operations in any particular locality, however, might or might not reflect such a decline, and in the particular case before me the company did not argue that the changes were brought about by “fluctuation of traffic”. In response to the general directive to cut costs, local supervision considered the work performed in certain positions and decided that some of it was not necessary to be performed. The fact that similar reviews and decisions were being made at other locations does not necessarily require the conclusion that these were operational or organizational changes. If the general directive had set out general principles of organization or methods of work, or if the changes which occurred reflected such principles, then it might be said these were operational or organizational changes within the meaning of Article VIII. Here, however, the general directive, which would have been quite proper whether or not business conditions were in decline, was really to the effect that local supervision should tighten up its operations. In these circumstances, it is not possible to characterize all of the changes which were made in response to this directive as organizational changes or not but rather each must be considered on its own. Certainly, some of the changes made in response to the directive may be organizational changes within the meaning of Article VIII.

As to the particular cases before me, the material put forward by the company shows that in each case either the work load was insufficient or the work itself not necessary to be performed. Here, as in **Case No. 284**, there was simply no longer a need for certain work to be done.

In the circumstances of these particular cases, then, it is my conclusion that these have not been the “technological, operational or organizational” changes contemplated by Article VIII of the job security agreement.

A similar conclusion is reflected in **CROA 2023**, a grievance in which the Canadian Brotherhood of Railway, Transport and General Workers claimed that the release of a supervisor back to bargaining unit service was an operational and organizational change. In that award the following comments occur:

In the Arbitrator’s view the evidence in the instant case does not establish that there has been an operational or organizational change within the meaning of Article 8.1 of the ESIMP, as it has been interpreted in previous awards of this Office. It is not disputed that the abolition of Mr. Bowen’s supervisory job was part of a larger initiative by the Company to implement a ten per cent administrative manpower reduction for economic reasons in 1986. ...

The instant case reveals that there was a general “belt tightening” in the administrative ranks of the Mountain Region, resulting in the abolition of Mr. Bowen’s supervisory position. There is no evidence of any discontinuance of any particular service previously provided by the Company, or of any part of its operations or organizational structures. In the circumstances, for the reasons related in **CROA 284** and **316** the Arbitrator is satisfied, assuming without finding that the ESIMP would apply, that the abolition of Mr. Bowen’s position would not have constituted an operational or organizational change within the meaning of Article 8.1 of the ESIMP. ...

The Arbitrator has carefully reviewed the arguments of the Brotherhood with respect to the language of the Job Security Agreement following the award of Arbitrator Dalton Larson on April 11, 1988. I am satisfied that there is nothing in the definition of the term technological, operational and organizational change which would derogate from the general jurisprudence reflected above. On the material before me, I am satisfied that the decision of the Company to implement wide-spread budgetary reductions across its operations, affecting jobs in a number of

bargaining units as well as those of supervisory employees, was taken as a response to a decrease in traffic volumes which was beyond the control of the Company. I would also conclude, if it were necessary to do so, that the elimination of certain track maintenance positions across the system, with the result that some of the work involved would necessarily be performed by other permanent track maintenance employees, would be justified as a normal reassignment of duties within the meaning of sub-paragraph (ii) flowing from circumstances not of the Company's own making. The changes in question would, in my view, also qualify as Company initiated changes "brought about by general economic conditions" within the meaning of the note to paragraph (m) of the definitions section.

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

June 14, 1999

(signed) MICHEL G. PICHER
ARBITRATOR

SUMMARY– CROA 3056

Claim improper lay off – company abolished 65 positions to save money after a downturn in traffic – general belt tightening – union claimed this was a TO&O change – arbitrator discusses difference between operational and organizational change and changes in organization and operations – CROA 316 289 284 2023 – GRIEVANCE DISMISSED

KEYWORDS – 3056

CPR BMWE claim technological, operational or organizational change fluctuation traffic dismissed

CPR – BMWE June 8 1999 – award dated June 14 1999