CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3063

Heard in Montreal, Wednesday, 14 July 1999

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

An alleged violation of article 17 of the Intermodal Supplemental Agreement.

JOINT STATEMENT OF ISSUE:

In late May of 1999, the Company modified its practice with regard to the types of assignment for which it called spare employees at the Montreal Intermodal Terminal (Monterm). Previously, the Company had called spare employees on a daily basis for singular work assignments of a maximum of eight hours. The Company changed its practice and began calling spare employees for assignments of several days' duration or more.

The Union alleges that the Company has violated article 17. The Union argues that the spareboard must be operated on the basis of daily calls and that calling for assignments of more than a day's duration is not contemplated by the language or spirit of the agreement and violates the past practice of the parties. In the alternative, the Union argues that the Company is estopped from making the changes.

The Company denies any violation of the collective agreement.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) A. ROSNER	(SGD.) A. deMONTIGNY
NATIONAL REPRESENTATIVE	FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

A. deMontigny	– Manager, Labour Relations, Montreal
A. Giroux	– Counsel, Montreal
D. Gagné	– Director, Intermodal. Montreal
M. Vachon	– Terminal Coordinator, Montreal
C. Roy	– Garage Manager, Montreal
D. Smith	– Director – Special Projects, Montreal
C. Jennis	– Human Resources Associate

And on behalf of the Union:

A. Rosner	– National Representative, Montreal
A. S. Wepruk	– President, Council 4000 (ret'd)
J. Savard	– Negotiation Committee, Montreal
W. Boiteau	– Local President, Montreal
Y. Suxducan	– Local Vice-President, Montreal
J. P. Chouinard	– Representative, Montreal
C. Bouchard	– Witness
J. Bellerose	– Witness

AWARD OF THE ARBITRATOR

The issue in dispute is relatively narrow. The Union submits that the Company violated the provisions of the Supplemental Agreement governing Intermodal and Cargo-Flo Terminals, and in particular the spareboard provisions therein by purporting to call employees from the spareboard to fill positions of up to ten days' duration. The Union submits that the agreement contemplates that employees are to be called from the spareboard to work on a daily or single shift basis. It argues that there is no provision within the articles governing spareboards which would allow the Company to call and assign employees from the spareboard on any other basis.

The Company's position is that article 14.3 of the collective agreement specifically contemplates the assignment of employees from the spareboard to temporary assignments of ten working days or less. That article reads as follows:

> **14.3** Temporary assignments of ten working days or less (which shall include temporary vacancies of ten working days or less) and vacancies in permanent or temporary assignments while under bulletin or pending occupancy by a successful applicant will, where necessary, be filled from the spare board or, at terminals where no spare board has been established, by qualified employees from the list of part time employees.

Upon a review of the provisions of the Supplemental Agreement, as well as the record of past practice, the Arbitrator has some difficulty with the position advanced by the Company. It is not disputed that spareboard operations are relatively new to the Intermodal and Cargo-Flo workplace, having been first introduced at Monterm in October of 1995. The concept of spareboards has, of course, had a lengthy existence in the railway industry, principally in relation to the running trades. As a general rule in that context spareboard service is specific to a single assignment or run, the equivalent of a single shift in the traditional industrial enterprise. Although running trade collective agreements do contain some provisions which allow for temporary vacancies at outpost assignments, for example, to be filled from the spareboard temporarily on a multi-day basis, such arrangements are exceptional and are generally articulated expressly within the collective agreement. There is no such language in the collective agreement at hand.

On the contrary, such language as does appear under article 17, which governs the establishment and operation of spareboards, tends to support the position of the Union with respect to spareboard assignments being on a daily or single shift basis. Article 17 contains, in part, the following provisions:

> **17.1** Spare boards may be established as required by the Company. When so established, spare boards will be operated in conformance with the provisions of this article. It is understood that spare boards shall not be utilized so as to replace or avoid regular assignments.
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> **17.2** Spare boards shall be utilized to perform relief and extra work of eight hours duration or more and, where no qualified part time employees are available, for relief and extra work of less than eight hours duration.
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> …
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> **17.10** While assigned to the spare board, an employee will be guaranteed wages for each guarantee period in the amount of 40 hours at the equipment operators' rate, subject to the provisions of paragraph 17.12. In cases where the employee is assigned to the spare board for only a portion of the guarantee period, the guarantee will be prorated based on the number of days so assigned.
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> **17.11** All compensation paid to an employee while assigned to the spare board will be used to offset the guarantee.
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> …
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> **17.14 (a)** Spare board employees will be called on a first in, first out basis. If not qualified for the work available, the employee first out will not be called but will retain first out status. In such cases, the first out employee qualified to perform the work will be called.
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> …

> **17.16** A qualified employee standing first out and available at straight time rates who is not called in the proper turn will be entitled to four (4) hours pay at the equipment operators' rate and will remain first out.
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> **17.17** Employees who are called and report for duty and are afterwards cancelled will be paid eight (8) hours pay at the equipment operators' rate and their names will be placed at the bottom of the board as of the time of cancellation. This shall not apply to employees held on duty and used on a work assignment other than that for which called.

In the Arbitrator's view the foregoing provisions are drafted in contemplation of employees being assigned on a daily basis from the spareboard. That, it seems to me, is clearly evident from the "called and cancelled" provisions of article 17.17. Bearing in mind that employees have the protection of a guarantee, the further payment of eight hours' pay when called and cancelled is more consistent with the concept of individuals being called for a single day assignments of eight hours or more.

Further, article 17.2 gives some insight into the intention of the parties. If it had been their purpose to make spareboards available for assignments of several days' duration or more the provisions of article 17.2 might reasonably be expected to reflect that understanding. The expression of spareboard work in terms of "eight hours' duration or more" is more consistent with the conclusion that the spareboard is to be utilized for assignments of daily work, and not for assignments of several days' duration.

Nor, in the Arbitrator's view, does the language of article of 14.3 change that conclusion. That article is found separately in a provision which relates to the bulletining and filling of assignments. The purpose of article 14.3 is relatively obvious: it allows the Company to fill temporary assignments and assignments which are vacant pending the completion of a bulletin by recourse to the spareboard. It says nothing to the method by which the spareboard is to operate in that circumstance. The operation of spareboards remains entirely controlled by the separate provisions of articles 17.14 through 17.20. In the Arbitrator's view if the parties had intended article 14.3 to override the special provisions of article 17 they would have expressed that intention in clear and unequivocal language, similar to that found expressly within certain of the running trades' agreements. That they have not done so supports the Union's interpretation

Additionally, assuming for the purposes of argument that there is some ambiguity in the spareboard provisions, the past practice of the parties also supports the position of the Union. It is common ground that on two separate occasions, in May of 1996 and again in May of 1998, the Company specifically approached the Union to obtain its agreement to allow spareboard employees to voluntarily fill positions of between five and ten shifts. The unfortunate record of relations between the parties before the Arbitrator indicates that while agreements to that effect were made, they were subsequently terminated. Significantly for the purposes of this grievance, however, by their conduct in May of 1996 and May of 1998, both parties acknowledged that the spareboard could not be resorted to for the filling of vacancies by assignment a single employee on the spareboard to a multi-day assignment without mutual agreement.

The Arbitrator appreciates the business concerns which prompt the Company to seek the facility of making multi-day assignments from the spareboard. As history within the railway industry has demonstrated, however, a spareboard can only operate when there is a high degree of good faith and ongoing understanding between the local representatives of management and the union concerned, with local agreements taking on a significant importance in the day-to-day workings of a successful spareboard. Unfortunately that reality has not yet asserted itself in the context of the instant agreement. It is to be hoped that the parties will take such steps as are necessary to achieve a truly harmonious spareboard operation.

For the reasons related, the Arbitrator cannot find in the collective agreement, nor in the practice of the parties, evidence to sustain the position of the Company to the effect that the Supplemental Agreement allows the Company to direct spareboard employees to undertake multi-day assignments. The grievance must therefore be allowed. The Arbitrator therefore declares that the Company has violated article 17 of the Supplemental Agreement and directs that it return to the prior practice of single day spareboard calls, subject to the negotiation of any contrary arrangement with the bargaining agent.

July 16, 1999

(signed) MICHEL G. PICHER
ARBITRATOR