

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3081

Heard in Montreal, Wednesday, 12 January 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

Article 8 Notice at Second Narrows Bridge, B.C.

JOINT STATEMENT OF ISSUE:

On July 16, 1999 the Company issued an Article 8 Notice to BLE/RCTC Chairperson Jim Ruddick stating their intention to abolish four positions of RTC/Operator at Second Narrows Bridge, B.C.

This notice stated in part that this abolishment was "as a result of a cumulative reduction workload associated with the Operator's duties over the years. The Notice further stated in part that "the Burlington Northern and Canadian Pacific Railways are implementing process and technological changes which will further reduce the need for these positions."

The Brotherhood contends that the RTCs at Second Narrows are the proper employees to perform the work at Second Narrows Bridge in accordance with rules, qualifications and also under the collective agreement between the Brotherhood and the Company.

The Company disagrees with the Brotherhood's contentions and further adds that the work in question is not work that is exclusive to the RTC.

FOR THE BROTHERHOOD:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. Y. deMONTIGNY
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. Y deMontigny	– Manager, Labour Relations, Montreal
L. M. Quilichini	– Manager, RTC Centre, Edmonton
T. S. Urbanovitch	– Manager, Operating Practices, Edmonton

And on behalf of the Brotherhood:

J. Ruddick	– Chairman, Burlington
M. Fowler	– Local Chairman, Edmonton
S. Mihell	– RTC Second Narrows

AWARD OF THE ARBITRATOR

On July 16, 1999 the Company gave notice to the Brotherhood of the abolishment of four RTC/operator positions at the Second Narrows Bridge, in British Columbia. It is common ground that the bridge has been serviced by both RTC/operators from the Brotherhood's bargaining unit and bridgetenders, sometimes referred to as signalmen, represented by the Brotherhood of Maintenance of Way Employees. The bridgetender has been chiefly responsible for overseeing the operation of the lift bridge to accommodate both boat and rail traffic. The traditional responsibilities of the RTC/operators have related to the operation of signals and switches and the conveying of train orders and directions, including such matters as track occupancy permits. The Brotherhood asserts that the intended performance of what it characterizes as RTC/operator functions to the bridgetenders at the bridge is in violation of the collective agreement, and that the performance of the core functions of the RTC/operator position by a bridgetender would, in any event, bring that individual within the grieving union's bargaining unit. The Brotherhood asserts that it holds bargaining rights for employees performing the work of rail traffic controllers pursuant to a certificate issued by the Canada Labour Relations Board on April 15, 1981. It further stresses that the Canadian Rail Operating Rules (CROR) and in particular rule 561 contemplate that train movements are to be supervised by an RTC.

The Company notes that an important operational change is being implemented at the Second Narrows Bridge. Specifically the current CTC (Centralized Traffic Control system) rules which have operated at Second Narrows are, as part of the change, being modified to less stringent rules governing Locally Controlled Interlocking Systems. Under the CTC regime the rules of the CROR would require the supervision of train movements by an RTC. However, under the interlocking system the rules contemplate train movement communications between train crews and signal men or bridgetenders at the location in question.

Fundamental to the grievance is the claim of the Brotherhood that it possesses jurisdiction to the work in question. A secondary, albeit related, issue is whether the duties and responsibilities which will ultimately devolve upon the bridgetender or signalman are such as to be fairly described as preponderantly involving the core functions of the RTC/operator position so as to come within the bargaining unit, under the Brotherhood's collective agreement.

When close regard is had to the material before the Arbitrator it is far from clear that the Brotherhood can claim exclusive jurisdiction to work concerning signals, switches and the communication of train movement orders in situations of locally controlled interlocking systems, such as will now obtain at the Second Narrows Bridge. The bridge is located in North Vancouver and is situated between the Lynn Creek Terminal, on its north side, and the Thorton Tunnel which connects to the Burlington Northern main line on that railway's New Westminster Subdivision to the south. It is, in many significant respects, comparable to the Fraser Bridge, which, it is not disputed, is staffed exclusively with bridgetenders who perform switch, signal and communications functions indistinguishable from those assigned to bridgetenders at the Second Narrows Bridge. It appears that the assignment at the Fraser Bridge was in fact the subject of a certification order of the Canada Labour Relations Board in favour of the Brotherhood of Maintenance of Way Employees. While it does not appear that the instant union was a party to those proceedings, there is no evidence before the Arbitrator to indicate that the Brotherhood ever disputed the Fraser Bridge assignment, by grievance or otherwise.

Nor does it appear that bridgetenders are the only employees outside the Brotherhood's bargaining unit to perform the functions here in dispute in a locally controlled interlocking area. The unchallenged representations of the Company's representatives at the hearing confirm that at various locations in Canada where the interlocking rules apply the same functions are variously discharged by yardmaster from the bargaining unit of the Canadian Council of Railway Operating Unions, and bridgetenders and section foremen from the ranks of the Brotherhood of Maintenance of Way Employees, as well as rail traffic controllers. It submits that examples are to be found in Melville, Saskatchewan, Capreol and Thunder Bay in Ontario and Halifax, Nova Scotia. The Company further notes that the Hansard Bridge in British Columbia is similarly serviced by bridgetenders represented by the Brotherhood of Maintenance of Way Employees.

It is clear that the rules of the CROR contemplate a signalman or bridgetender engaging in train movement communications and other responsibilities which would apparently overlap those of the RTC/operator. Rule 609 reads, in part, as follows:

- (a) When a train or engine is stopped by a locally-controlled interlocking signal indicating Stop, and no conflicting train or engine is evident:
- (i) a crew member must immediately communicate with the signalman ...
 - (ii) the signalman may authorize such train or engine to pass the signal, but before doing so, the signalman must provide protection against all conflicting trains or engines ...

It appears clear to the Arbitrator that the general duties of the bridgetender at Second Narrows, including limited involvement with the lining up of the train route and switches, by way of direct communication with the rail traffic controller of Burlington Northern, entering train crews and the yardmaster at Lynn Terminal, do not, on their face, involve any departures from established rules nor from a number of precedents established elsewhere on the Company's system.

The Company's initiative is obviously pursued for valid business purposes. Given the flexibility which it can gain by reverting to the rules which govern interlocking systems, it seeks to gain the efficiencies of utilizing the services of employees in a single classification to perform a slighter broader range of functions, rather than face the less productive option of having two separate classifications of employees performing separate functions when a train utilizes the bridge. On the whole I am satisfied that the initiative of the Company falls within its prerogatives, and that there is nothing in the language of the collective agreement at hand which would give exclusive jurisdiction to the Brotherhood in respect of the work in question. In my view the case at hand is to be distinguished from the different facts reviewed by this Office in **CROA 804** and **805**. The Brotherhood's claim cannot succeed on the basis that the work in question falls within its exclusive jurisdiction.

Can it be said, on the evidence adduced, that the bridgetender tangentially performing the functions previously handled by the RTC/operator at Second Narrows falls within the bargaining unit by virtue of that fact? I think not. Significantly, the functions being handled by the bridgetender or signalman at the Second Narrows Bridge are generally recognized, and are acknowledged within the rules of the CROR, to be work normally assigned to a signalman or bridgetender. In that circumstance the Arbitrator has substantial difficulty concluding that the persons who will perform such functions can fairly be characterized as performing little other than duties exclusive to an RTC/operator. On the contrary, it would appear that the duties and responsibilities of the bridgetender or signalman so assigned will be consistent with those of other similarly assigned individuals on the system, as well as overlapping the functions performed by members of other bargaining units including yardmasters and section foremen. The Arbitrator is therefore satisfied that there has been no violation of the collective agreement by the Company in the issuing of the article 8 notice of July 16, 1999. The grievance must therefore be dismissed.

January 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR