CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3083

Heard in Montreal, Wednesday, 12 January 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

EX PARTE

DISPUTE:

The Company's refusal to issue a material change notice to the Brotherhood for the elimination of assignment 584 which operated between Taschereau and St. Jerome, Quebec.

EX PARTE STATEMENT OF ISSUE:

On November 2, 1998 the Company sold the Monfort Subdivision to the Quebec Gatineau Railway. As a consequence of this line sale the Company abolished assignment 584. The Brotherhood subsequently requested a material change notice from the Company. The Company refused the respond to the Brotherhood's request.

The Brotherhood filed a Step III grievance with the Company. The Company has declined the Brotherhood's grievance.

FOR THE COUNCIL:

(SGD.) B. E. WOOD
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Laurendeau	– Labour Relations Associate, Montreal
D. Parent	– Assistant Superintendent – RDP

And on behalf of the Council:

B. E. Wood	– General Chairman, Halifax
A. Picard	– Local Chairman

AWARD OF THE ARBITRATOR

This dispute arises out of the sale by the Company of part of the Monfort Subdivision to the Quebec Gatineau Railway. The Council asserts that that the sale of the territory, which resulted in the loss to its members of work in relation to road assignment 584, constitutes a material change for which the Council was entitled to a formal notice, and attendant procedures, pursuant to article 78.2 of the collective agreement. The Council would seek to obtain for members adversely affected by the change the opportunity to negotiate, or alternatively arbitrate, terms and conditions fashioned to minimize the adverse impact upon the employees affected. Article 78.2 of the agreement reads, in part, as follows:

> **78.2** In all other cases of material changes in working conditions which are to be initiated solely by the Company and which would have significantly adverse effects on employees, the Company will:

> **(a)** Give at least 120 days' advance notice to the Union of any proposed change, with a full description thereof and details as to the anticipated changes in working conditions; and
>
> **(b)** Negotiate with the Union measures to minimize any significantly adverse effects of the proposed change on employees;

It is common ground that prior to September of 1996 assignment 584 was a regular assignment working five days per week, with an established starting time. Thereafter, however, it became a temporary assignment. Between October of 1996 and January of 1998 assignment 584 was operated on a two day a week basis, with occasional extra assignments as needed. Thereafter, in February of 1998 it was augmented to a temporary assignment on a three day a week basis, a status which remained in place until the abolishment of the assignment with the sale of the territory to the Quebec Gatineau Railway, which commenced operations on the subdivision effective November 2, 1998.

There is some dispute between the parties as to whether the Company is required to provide a material change notice with respect to the cessation of a temporary assignment, in any event. The Company submits that it has never followed the practice of dealing with the cancellation of temporary assignments within the framework of a material change notice. However that may be, the Arbitrator finds it unnecessary to deal with that aspect of the dispute for the purposes of this grievance, which in my view must be fully disposed of on the basis of the reasons which follow.

As the party pursuing a claim under the terms of article 78.2 of the collective agreement the Council bears the onus of proof. To bring itself within the terms of the article the Council must establish that there has been a material change, that it was initiated solely by the Company and that it "… would have significantly adverse effects on employees". This Office has had prior occasion to consider the meaning of significantly adverse effects. In **CROA 1167** the following comments appear:

> In considering the second factor referred to above I am also satisfied that it would not suffice for the Trade Union to show that the engineers involved were merely adversely affected by the proposed changes. The Trade Union must demonstrate "significantly" adverse effects. That is to say, it must be established that such proposed changes in working conditions will have the adverse effect of rendering the engineer redundant or superfluous to the Company's manpower exigencies or otherwise undermine his job security. …

A similar note was struck in **CROA 2364**, where the following comment is found with respect to the material change provision in the collective agreement then in effect between the same parties:

> … That provision is, I think, drafted in contemplation of minimizing real consequences on individual employees whose lives are negatively impacted in a meaningful way, as regards their earnings, their work opportunities, the possibility of demotion, lay-off and the like. …

In the instant case, the Council brings no evidence to the table with respect to any employee having suffered adverse effects by reason of the abolishment of temporary assignment 584. It is common ground that the last employee to operate the assignment, other than from the spareboard, Locomotive Engineer Dumas, did not suffer any loss in respect of earnings and work opportunities by reason of the change. The uncontradicted submission of the Company is that in fact Mr. Dumas' earnings increased in the year following the abolishment of assignment 584. Nor can it be inferred, much less concluded, that adverse effects were visited upon any junior employees. The record discloses that the number of regular locomotive engineer positions on the Second Seniority District in fact increased from thirty-six positions to thirty-seven at the 1998 fall change of time. Over the same period the spareboard remained constant, with five employees both before and after the fall change of time table.

There is, very simply, no objective evidence of any adverse effect on any employee by reason of the cancellation of assignment 584 on the Monfort Subdivision, much less evidence upon which a board of arbitration can conclude that any employee suffered "significantly adverse effects" as understood within the meaning of article 78.2 of the collective agreement, interpreted in light of the awards of this Office in **CROA 1167** and **2364**. In all of the circumstances I am satisfied that the Council has failed to discharge the onus of proof which is upon it in this claim. The grievance must therefore be dismissed.

January 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR