CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3125

Heard in Montreal, Wednesday, 12 July 2000

concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

UNITED TRANSPORTATION UNION

DISPUTE:

The applicability of article 30 to the abolishment of Extensions 1 and 2 of the Timmins/Cochrane/Hearst run assignment.

JOINT STATEMENT OF ISSUE:

On November 15, 1998, after meetings with representatives of the United Transportation Union, the Company abolished Extensions 1 and 2 of the Timmins/Cochrane/Hearst run assignment.

The Union requested that the Company serve notice under article 30 of the collective agreement of its intention to abolish the runs, that the benefits of articles 30.2 and 30.3 be extended to the affected employees and to negotiate other measures to minimize the adverse effects on employees.

The Union requested that the following employees be compensated for loss of earnings as follows: Gilles Guertin $3,431.28, Bob Saudino $1,419.84, Tim Kopsaftis $3,053.88, Gary Fleming $2,864.16, Jim Aultman $8,429.28, Bill Boyd $6,268.92, Carlo Bevilaqua $118.80, Bill Ross $1,352.52 and the following employees for expenses incurred: Tony Wenzell $3,582.60, Marc McMahon $8,542.00, Steve Swant $4,196.00 for a grand total of $43,259.28.

The Company took the position that article 30 of the agreement did not apply and denied the Union's request.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) P. G. KONING	(SGD.) L. K. MARCELLA
GENERAL CHAIRMAN	DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule	– Manager, Labour Relations, North Bay
K. Duquette	– Labour Relations Officer, North Bay
D. Rochon	– Assistant Operations Manager, North Bay

And on behalf of the Union:

D. F. Wray	– Counsel, Toronto
P. G. Koning	– General Chairman, North Bay
Wm. Ross	– Local Chairperson, Local 1161

AWARD OF THE ARBITRATOR

The issue in this grievance is whether the Company was obliged to give notice under article 30 of the collective agreement upon the abolishment of two long distance bus runs, referred to as extensions 1 and 2 of the Timmins/Cochrane/Hearst assignment. The Company maintains that the change which it brought into effect was done in the normal course of business, at the fall change of time bulletining, and that article 30 has no application. The Union stresses that the abolishment of the two runs has caused a substantial reduction in the earnings of a number of employees, and compelled at least three of them to live away from their families by residing partially in Timmins, at additional expense. It maintains that the facts disclose what it characterizes as a material change in respect of which the Union was entitled to notice and the negotiation or arbitration of terms and conditions to minimize the adverse effects of the change.

Article 30 of the collective agreement governs this dispute. It reads, in part, as follows:

> **30.1 (a)** Prior to the introduction of changes in home terminals initiated solely by the System involving significantly adverse effects upon employees, the System will give at least three months' advance notice to the union of any such proposed change with a full description thereof along with details as to the anticipated changes in working conditions.
>
> **(b)** The company will negotiate with the union, measures other than the benefits covered by Sections 2 and 3 of this Article to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in schedule rules considered necessary for the implementation of a material change is also subject to negotiation.
>
> …
>
> **(l)** This rule 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 reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged.

Upon a close review of the facts and materials submitted, the Arbitrator has substantial difficulty with the position of the Union. As a first proposition, it appears to the Arbitrator that the language of article 30 is clear and unambiguous. The Company's obligation to give notice of a change arises in one circumstance, namely when its action results in a change in home terminals. The Union seeks to construe the concept of "changes in home terminals" as tantamount to any change in work assignments or working conditions which may be implemented within a given home terminal, a concept which is quite distinct from the closing or abolishing of home terminals. The Arbitrator can see nothing within the language of the article which would expressly or implicitly support such an interpretation which would, in my view, be relatively unprecedented in the context of the collective agreements which contain material changes provisions falling under the jurisdiction of this Office. While it is true that sub-paragraph (b) of article 30.1 speaks to "such adverse effects of the material change on employees who are affected thereby", it is clear that the reference to "the material change" in that context ties back to the governing phrase in sub-paragraph (a) which is "changes in home terminals". There is, therefore, on the face of the language of the provision nothing which would suggest an obligation on the part of the Company to give notice under article 30 unless the initiative which it implements involves changes in home terminals. No such changes are evident in the abolishment of the bus routes which are the subject of this grievance.

In the alternative, if the language in question can be said to be ambiguous, justifying resort to extrinsic evidence, the past practice is less than conclusive in favour of the Union's interpretation. Firstly, it does appear that the Company has given notice to the Union in the past upon the closing of terminals. That occurred, for example, in the closure of terminals at Huntsville in 1993 and Barrie in 1997. The evidence also discloses a number of cancelled runs in respect of which no article 30 notice was served and no grievance was filed. That evidence is less than conclusive, however, as the Union's representative suggests that it may have involved a situation where the Union was satisfied that the exception in sub-paragraph (l) applied. The evidence appears to also disclose some occasions when the Company did negotiate terms to minimize adverse impacts upon the cancellation of runs where there was arguably no change in home terminal. The Company's representative submits that if it did make such arrangements

on occasion, it does not amount to a formal acknowledgement on the part of the employer that article 30 has any application in such cases. On the whole, I am satisfied that the evidence of past practice would, at best, be inconclusive and does not support the position of the Union, which has the burden of proof in this grievance.

As a final alternative, if the Arbitrator were satisfied that the Union's interpretation is correct, and that the concept of material change within article 30 must be construed as to cover situations beyond changes in home terminals, including other forms of material change, the grievance would still not succeed. The jurisprudence of this Office well establishes that the periodic cancellation or change of runs or assignments, a concept not infrequently encountered in the railway industry, is generally viewed as the kind of change which is normal and inherent in the nature of the work performed by transportation employees (**CROA 332, 1167, 1444, 2893, 2696 and 3125**).

In the case at hand the Arbitrator can readily appreciate the concerns which motivate the grievance. There can be little doubt that employees have seen their earning opportunities reduced by reason of the partial abolishment of extensions 1 and 2 of the Timmins/Cochrane/Hearst run assignment. Those changes do not, however, qualify as "changes in home terminals" within the meaning of article 30 of the collective agreement, nor would they in any event amount to a material change as understood in the jurisprudence of this Office, being related as they are to normal changes or adjustments common to the business of bus transportation service, and therefore inherent in the work of persons employed as drivers within the Company's operations, within the exception of article 30.1(l) of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

July 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR