

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3142

Heard in Montreal, Thursday, 14 September 2000

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (UNITED TRANSPORTATION UNION)

EX PARTE

DISPUTE – COUNCIL :

Recognizing the material change in working conditions and adverse effects caused by the abolishment of four (4) traffic coordinator positions at East Tower, Walker Yard, Edmonton.

DISPUTE – COMPANY :

Grievance concerning the alleged violation of article 22.1 of agreement 4.2 as a result of the abolishment of four traffic coordinator positions at the East Tower in Walker Yard on January 22, 1999.

COUNCIL'S STATEMENT OF ISSUE:

In January of 1999, four traffic coordinator positions at the East Tower of Walker Yard were abolished. The Company did not serve notice of material change pursuant to article 22 of agreement 4.2

A material change notice regarding decommissioning of the Walker Hump was served by the Company on the Union February 5, 1999.

During meetings on February 18, 1999, Company officials agreed to address the adverse effects of the abolishment of the four East Tower traffic coordinator positions concurrent with the negotiations taking place regarding the Walker Hump material change, a position that was reaffirmed to the Union during a March 19, 1999 meeting with the Company.

The February 5, 1999 notice of material change was rescinded by the Company by way of a letter dated March 31, 1999. However, the mitigation of adverse effects resulting from the abolishment of the East Tower traffic coordinator positions remains outstanding.

The Union maintains that the Company has violated the collective agreement by failing to negotiate mitigation of this admitted material change in working conditions prior to implementation and requests that the four traffic coordinator positions be reinstated and that all employees adversely affected by the abolishment of these positions be fully compensated and made whole for their losses.

The Company has now stated that the abolishment of the four traffic coordinator positions at the East Tower was a result of a downturn in traffic and, as such, no material change has taken place.

COMPANY'S STATEMENT OF ISSUE:

By way of bulletin on January 21, 1999, the Company abolished the four traffic coordinator positions in the East Tower, to be effective with the board change on January 22, 1999. The Company did not serve a notice of material change pursuant to article 22 of agreement 4.2.

The Union contends that the abolishment of these assignments constitutes a material change in working conditions as outlined in article 22 of agreement 4.2 and that the Company has violated the collective agreement by failing to negotiate mitigation of the alleged material change in working conditions prior to implementation.

The Union requests that the four traffic coordinator positions be reinstated and that all employees adversely affected by the abolishment of these positions be fully compensated and made whole for their losses.

The Company maintains, as has consistently been maintained since January of 1999, that the abolishment of these assignments does not constitute a material change pursuant to article 22 of agreement 4.2, but rather these job abolishments occurred as a result of a downturn in workload, fluctuations in traffic as well as the traditional reassignment of work or other normal changes inherent in the nature of the work in question, as outlined in article 22.1(k) of agreement 4.2

FOR THE COUNCIL:

(SGD.) R. A. HACKL
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. J. BLACKMORE
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

S. J. Blackmore	– Labour Relations Associate, Edmonton
R. Valliere	– Terminal Superintendent, Edmonton
L. Rea	– Transportation Officer, Edmonton

And on behalf of the Council:

R. A. Hackl	– Vice-General Chairman, Edmonton
B. J. Henry	– General Chairman, Edmonton
W. G. Scarrow	– Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator has some difficulty with the position advanced by the Council. It alleges that the abolishment of the four traffic coordinator positions at the East Tower of Walker Yard, in Edmonton, constituted a material change prompted by technological and operational innovations at the instance of the Company. The initial position of the Council is understandable, in that there was a comment apparently made by the Company's General Manager in February of 1999 to the effect that the abolishment of the East Tower positions might constitute a material change, the negotiation of which could be folded into other discussions regarding the decommissioning of the Walker Hump. In fact, however, the Company did not endorse the position so expressed, and declined repeated efforts by the Council's representatives to treat the matter as a material change.

The grievance arises under article 22 of the collective agreement which provides, in part, as follows:

22.1 The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of paragraph 22.1 of this article.

...

22.1(k) This article 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.

The Council's submission is based largely on its perception of the change of circumstances in Walker Yard implemented over a relatively substantial period of time. Among other things it questions the suggestion of the Company that the workload has decreased, citing the fact that extra yard assignments have become relatively frequent. It also cites the fact that closed circuit cameras in the yard have been utilized to allow the Hump Tower traffic coordinator to monitor work previously overseen by traffic coordinators at the East Tower. Additionally, the Council's representative cites the use of remote printers and fax machines for the conveying of switching lists to yard crews, a task formerly performed by the East Tower traffic coordinators.

In the Arbitrator's view the material filed by the Company tends to support its submission that the changes implemented resulted from factors inherent in railway operations, including the achievement of greater efficiencies and an overall reduction of assignments. The material provided by the Company notes that the East Tower traffic coordinator was previously responsible for co-ordinating thirteen yard assignments. Following the abolishment of the four positions the work in question was transferred to the hump, with the hump traffic coordinator being responsible for six yard assignments. That efficiency was apparently made possible, in part, by the fact that the Hump Yard traffic coordinator did not previously list out or manage yard crews, but was responsible only for retarder controls on the hump operation. Therefore, by a normal reassignment of work the Company was able to gain greater efficiencies. Its evidence also establishes that it was able to implement the change which it did in part because of a general reduction in yard assignments as well as a reduced need to handle cars within the yard. Specifically, the Company notes that in December of 1998 there were fifty-one yard assignments in the Edmonton terminal, a figure which was reduced to thirty-two as of August 24, 2000. Even allowing for the extra assignments, within the Edmonton terminal yard assignments were reduced from sixty-one assignments per week in January of 1999 to fifty-three assignments per week as of February 27, 1999. These efficiencies were contributed to, in part, by the fact that crews in Symington Yard, Winnipeg have pre-marshalled trains into blocks, a factor which substantially reduced the need for humping and switching individual cars in Walker Yard for the marshalling of trains.

In this grievance the Council bears the burden of proof. On the whole of the evidence before me I cannot find that that burden is satisfied, on the balance of probabilities. While it is true that television cameras and fax machines have facilitated the changes made by the Company, those technologies were not introduced for this purpose. The principal adjustment seems to be that the fax machines, which were previously in place and generally used by road crews, became utilized to communicate switching lists to yard crews. Similarly, the pre-existing camera system facilitated the ability of the hump coordinator to oversee a smaller number of crews who would have previously been handled by the East Tower traffic coordinator. On the whole, I am satisfied that the evidence discloses the kind of adjustment of the workforce and of operations which is traditional and inherent in the nature of yard switching work, the result of which has been a reduction in the need for traffic coordinators in the East Tower of Walker Yard. I cannot conclude, on the material before me, that what transpired involved a material change in the sense contemplated by article 22 of the collective agreement.

For the foregoing reasons the grievance must be dismissed

September 18, 2000

(signed) MICHEL G. PICHER
ARBITRATOR