

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3177

Heard in Montreal, Tuesday, 9 January 2001

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

The transfer of work from TPMA positions represented by the bargaining unit to conductors represented by the United Transportation Union.

JOINT STATEMENT OF ISSUE:

On March 20, 2000, the Company changed the manner in which conductors submitted their tie up sheets to the Network Management Centre in Calgary. Rather than faxing hard copies of their tie up sheets to the Network Management Centre in Calgary, conductors submit their tie up information by computer.

The Union submits that this amounts to a transfer of work to the conductors and maintains this transfer of work has had a detrimental effect on its membership resulting in the abolishment of TPMA positions.

The Union requests that this train delay reporting work be returned to the TPMA positions. The Union has also requested that all TPMA positions previously abolished be re-established with employees who lost positions made whole.

The Company submits that conductors have traditionally been responsible for submitting their tie up sheets to the Network Management Centre and changing the method in which information is conveyed to the Network Management Centre does not amount to a transfer of work. In any event, the change in method by which tie up information is submitted by conductors to the Network Management Centre has not resulted in any loss of TPMA positions. The Company maintains that the Union cannot claim exclusivity to performing the entry of tie up or delay information in the computer system.

The Company has declined the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. HAMPEL
FOR: GENERAL MANAGER, NMC

There appeared on behalf of the Company:

R. V. Hampel – Labour Relations Officer, Calgary
J. S. Sutherland – Director, NMC, Calgary

And on behalf of the Brotherhood:

J. Ruddick – General Chairman, Burlington
D. Arnold – National Advisor, BLE, Calgary

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that for a number of years the duties of the Train Performance Monitoring Analyst, Forms (TPMA), employed at Calgary, included receiving faxed tie up reports from the conductors of train movements. The TPMA was then responsible for inputting the information relating to train delays conveyed by the conductor into the Company's computer system. While there is no precise evidence as to this point, it is not disputed that the data inputting function was only a fractional part of the core duties of the TPMA. The Brotherhood's representatives suggest that it might have amounted to 25% of an employee's working time, while the Company submits that the inputting of delay data into the computer system would have amounted to little more 10% of the regular duties and responsibilities of the TPMA. It appears that the core function of the TPMA principally relates to compiling and analysing information, derived primarily from the train sheets of rail traffic controllers, to document the reasons for and extent of train delays, as well as calculating the actual overall delay of trains in transit, for the purposes of assisting rail traffic controllers in making ongoing operational decisions in the movement of trains under their control. It is also common ground that TPMAs who are qualified in RTC work may perform work on an RTC desk, and indeed an arrangement was recently put in place whereby the regular duties of TPMAs at Calgary include the lunch time relief of rail traffic controllers.

The instant grievance arises by reason of a change in the train delay reporting process instituted in March of 2000. At or about that time the Company arranged for the conductors of trains to no longer submit their train delay reports in the form of a hard copy submitted by fax. Rather, from that time forward conductors were instructed to directly input their delay report into the Company's computer system. In effect, the change eliminated the role of the TPMA as middle-man or conduit in the passing of the information from conductors into the Company's computer system. It would also appear that under the new arrangement conductors are expected to provide information with respect to the reasons for the delay of their movement and, if necessary, to obtain specific facts in that regard from their rail traffic controller. While the Brotherhood submits that that additional requirement represents a substantial change, the Company's representatives stress that the earlier hard copy forms utilized through the fax system also contained space for notations as to the reasons for a train's delay.

The Brotherhood submits that the Company has violated the collective agreement by essentially removing the work of the TPMA and placing it in the hands of another craft, namely the conductor. Its representatives submit that the prior function of the TPMA, both in inputting the conductor's report into the computer system and in reviewing train sheets to develop train performance data, has been encroached upon by the change implemented with respect to the method of reporting delays utilized by conductors. While the Brotherhood does not cite any specific article of the collective agreement as being violated, the thrust of its submission is that tasks falling within the work jurisdiction of the TPMA position have been improperly reassigned outside the bargaining unit, to employees in another craft. The Company's position is that there has merely been a change in the method of communicating train delays by conductors, substituting electronic communication by computer for the previous system of fax communication. It maintains that the mere fact that TPMAs no longer need to input faxed conductors' reports into the computer system does not of itself involve a transfer of work. Additionally, the Company stresses that no TPMA positions have been reduced or eliminated by reason of the change. Finally, it submits that the Brotherhood cannot claim exclusive jurisdiction to the work, in any event. In that regard it notes that at other locations, notably Montreal, the work performed TPMAs in Calgary is performed by either managers or non-scheduled employees. It therefore maintains that the work in question is not within the exclusive jurisdiction of the Brotherhood.

Upon a review of the facts, and the authorities submitted, the Arbitrator has substantial difficulty with the position of the Brotherhood. While the instant case involves an alleged transfer of work outside the bargaining unit, it is otherwise similar to the facts in **CROA 2055**, a dispute between CN and the then Rail Canada Traffic Controllers. In that case the union grieved the assignment of transportation operators' work to rail traffic controllers. The change there under consideration involved the installation of a computer at the work stations of rail traffic controllers. Previously RTCs would generate recorded information, including train delay data, on a written sheet which would then be input into the computer system by the operators. The change allowed the direct source inputting to be done by the RTC, thereby eliminating a portion of the work to be performed by the operator. Although that case was argued on the basis of a different article, the grievance was dismissed, it being found that the Company was entitled to assign such clerical tasks to the rail traffic controllers.

Somewhat to the same effect, in **CROA 2404**, a case involving CN and the Canadian Brotherhood of Railway, Transport and General Workers, it was found that the inputting of rules standing and medical updates into the company's computer system by persons other than the clerks who had previously been involved handling such data

did not violate the collective agreement. In that case there was no evidence to suggest that the union could claim exclusive jurisdiction to such work. A lack of exclusivity of jurisdiction was also found to obtain in a more recent award involving the Brotherhood. In **CROA 3081** the abolishing of four RTC/Operator positions at Second Narrows Bridge, in British Columbia, was found not to involve any violation of the collective agreement, where the work in question was reassigned, in part, to bridge tenders in the bargaining unit of the Brotherhood of Maintenance of Way Employees. The evidence disclosed that the work in dispute was variously performed at a number of locations by bridge tenders, and could not be claimed to be within the exclusive work jurisdiction of the RTC/Operators.

This is not the first case in which the concept of direct computer inputting, so as to eliminate a clerical job function, gives rise to a grievance with respect to the improper removal of bargaining unit work. For example, in **CROA 2057** it was found that the company properly abolished a number of clerical positions. Those positions had previously involved the gathering of requests for information from customers, and providing them with information with respect to tracing the progress of their shipments. Changes made by the company allowed its customers to directly access the company's main frame computer, to effect their own search for the information. Citing an American railway award which characterized a similar situation as "an elimination of work, rather than a transfer of work", the arbitrator rejected the allegation of the union that the company's actions involved a form of contracting out.

As noted above, in the instant case there is no evidence of any real loss of work by persons in the classification of TPMA by reason of the change implemented by the Company. While it is not disputed that TPMA positions at Calgary declined, commencing in December of 1999, the unchallenged representation of the Company is that those changes were part of a larger downsizing necessitated by budgetary constraints. Moreover, the uncontroverted evidence seems to be that the core functions of generating train delay data reports, and plotting the delay status of trains in transit for operational purposes, continues to be performed by the TPMAs at Calgary.

The fundamental weakness of the instant grievance arises, in the Arbitrator's view, from the fact that the Brotherhood cannot demonstrate exclusive jurisdiction with respect to the work in question. Even if it is accepted that the facts disclose the transfer of a portion of work previously performed by Calgary based TPMAs to conductors, the evidence is categorical that work of that kind has been regularly performed within the Company's operations by persons other than members of the bargaining unit. Specifically, managers and non-scheduled employees at Montreal have, for some time, performed the very functions which are the subject of this dispute. In these circumstances it is not open to the Brotherhood to claim more than concurrent jurisdiction with respect to the work in question. That is especially so where, as in the instant case, it can point to no provision of the collective agreement which confers exclusive work jurisdiction upon employees in the TPMA classification.

In summary, there is nothing in the facts of the instant case which compellingly supports the claim of the Brotherhood. TPMAs continue to perform the core functions of their classification at Calgary. The inputting of train delay data into the Company's computer system cannot be described as work exclusive to their classification. No article of the collective agreement is cited which would confer such exclusive jurisdiction. In essence what has occurred is a change in the method of communication to be utilized by conductors and, arguably, a resulting elimination of work for TPMAs. In the result, no violation of the collective agreement is disclosed, and the grievance must be dismissed.

January 15, 2001

(signed) MICHEL G. PICHER
ARBITRATOR