

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3404

Heard in Montreal, Wednesday, 11 February 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Violation of article 22 and appendix AJ of agreement 4.2. Implementation of an appropriate remedy consistent with the provisions of article 85, addendum 123 of agreement 4.16.

UNION'S STATEMENT OF ISSUE:

On August 26, 2003 the Company initiated a re-organization of traffic within the Terminal of Montreal. The initiative resulted in a reduction in the number of regularly assigned Traffic Coordinator positions at East Departure. Further, and in relation to the reorganization, on October 26, 2003 the Company rescheduled a number of the regular assigned Traffic Coordinator positions, resulting in permanent vacancies on Saturday and Sunday. These permanent vacancies have resulted in management performing the traditional duties of a Traffic Coordinator.

It is the Union's position the Company violated the reasonable intent of article 22 and Appendix AJ, as a result, requested that an appropriate remedy be applied.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. A. BEATTY
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. Coleman	– Counsel, Montreal
K. Tobin	– Counsel, Toronto
J. Torchia	– Director, Labour Relations, Edmonton
B. Hogan	– Manager, Labour Relations, Toronto

D. VanCauwenbergh	– Sr. Manager, Human Resources, Winnipeg
D. Fournier	– Division Manager – CMC, Montreal
J. Krawec	– Sr. Manager, Labour Relations, Toronto
O. Lavoie	– Trainmaster, Montreal
D. Parent	– Trainmaster, Montreal
T. Marquis	– General Manager, S.O.D.

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
R. A. Beatty	– General Chairperson, Sault Ste. Marie
R. LeBel	– General Chairperson, Quebec
J. W. Armstrong	– Vice-President, Edmonton
J. Gagné	– Vice-General Chairperson, Quebec
G. Anderson	– Vice-General Chairperson
B. R. Boechler	– General Chairperson, Edmonton
W. G. Scarrow	– Vice-Local Chairperson, Sarnia
G. Dubois	– Local Chairperson
J. P. Paquette	– Local Chairperson
J. Robbins	– Vice-General Chairperson
S. Tapp	– Local President
S. Pommet	– Local Chairperson
R. Dyon	– General Chairman, TCRC, Montreal
P. Vickers	– Vice-General Chairman, TCRC

The preliminary objection filed by the Company prior to the hearing of this dispute was resolved between the parties at the hearing on Wednesday, February 11, 2004. The hearing was therefore adjourned by the Arbitrator to April 2004.

On Wednesday, 14 April 2004, there appeared on behalf of the Company:

K. Tobin	– Counsel, Montreal
J. Coleman	– Counsel, Montreal
B. Hogan	– Manager, Labour Relations, Toronto
D. Van Cauwenbergh	– Sr. Manager, Human Resources, Toronto
J. P. Krawec	– Sr. Manager, Labour Relations, Toronto
T. Marquis	– General Manager, Operations, Toronto
D. Fournier	– Division Manager, CMC
J. Quik	– Manager, COMPORT
J. Torchia	– Director, Labour Relations, Edmonton
F. O'Neill	– Locomotive Repair Centre, Toronto
D. Laurendeau	– Manager, Labour Relations, Montreal

And on behalf of the Union:

J. Robbins	– Vice-General Chairperson, Sarnia
R. LeBel	– General Chairperson, Quebec
W. G. Scarrow	– Vice-Local Chairperson, Sarnia
G. Marcoux	– Local Chairperson, Montreal
S. Pommet	– Local Chairperson – Yard,

AWARD OF THE ARBITRATOR

The Union alleges that the abolishment of a traffic coordinator's position at Taschereau Yard arose in the context of a material change, and maintains that the Company failed to provide notice to the Union under the provisions of article 22 of Collective Agreement No. 4.2. The Union also alleges a violation of Appendix AJ of agreement 4.2, a provision which relates to limitations on management performing bargaining unit work. Article 22.1 of the collective agreement 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.

(a) The Company will provide negotiate with the Union measures other than the benefits covered by paragraphs 22. and 22.3 of this article to minimize such adverse effects of the material change on employees who are affected thereby.

...

(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 the employees are engaged.

The material before the Arbitrator confirms that a number of changes in operations resulted in a reduction of work at Taschereau Yard. Significant in that change was the reassignment of work to the St. Lambert Yard, including the building of

road switcher trains at that location, due partly to the decision of the Company to devote a section of the Taschereau Yard, referred to as East Departure, to the exclusive handling of General Motors auto trains.

Upon a careful review of the facts the Arbitrator is satisfied that what took place does fall within the exception provided in article 22.1(k) of the collective agreement. The movement of work from one yard to another in the Greater Montreal Area must, in the Arbitrator's view, be viewed as part of the everyday management of a railway's operations and, to that extent, it does constitute "normal changes inherent in the nature of the work in which employees are engaged." The facts fall squarely within principles well established within the prior awards of this Office (see, **CROA 332, 1444, 2893, 3142, 3143, and 3332**).

Nor does the evidence support the application of Addendum 123 of the collective agreement by reason of an alleged violation of Appendix AJ of the collective agreement. According to the Company, while the evidence does establish that management at St. Lambert does get involved, to some degree, in the preparation and distribution of switch lists, the work in question appears to be sporadic and is done only on an overflow basis, with supervisors occasionally stepping in when the work of the yard coordinator becomes excessive, something they have always done. Moreover, the circumstance is not substantially different from that existing at other locations. While the Arbitrator does not comment on the merits of this jurisdictional issue, for the purpose of this award it is sufficient to find, as I must, that there is a good faith disagreement between the parties

as to the application of the collective agreement. This is not a case of blatant and indefensible violation of the agreement that would justify the application of Addendum 123, as established in **CROA 3310**.

For the foregoing reasons the grievance must be dismissed.

April 20, 2004

(signed) MICHEL G. PICHER
ARBITRATOR