

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3600

Heard in Montreal, Tuesday, 9 January 2007

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

(RAIL TRAFFIC CONTROLLERS)

EX PARTE

DISPUTE:

The use of outside contract employees to work the relief positions at Harbour Drawbridge and future relief assignments to be governed under collective agreement 10.1.

UNION'S STATEMENT OF ISSUE:

On or about June 23rd, 2006, the Company advised the Union that the relief positions at Harbour Drawbridge would no longer be assigned to members from our bargaining unit. The Company also advised that future assignments to the relief positions would be bulletined as bridgetenders collective agreement 10.1

The Union grieved the Company's actions involving numerous violations of our collective agreement which include articles 2.4, 23.3, 23.11 and 23.13, and also that the Company was dealing in bad faith.

The Union also argues that the Company is estopped from making those changes and must immediately cease and desist from using contract or any other employees from outside our bargaining unit at Harbour Drawbridge.

The Company must also pay out lost wages and benefits due to this loss of work as well as any lost Union dues. The Company denied the Union's grievances.

FOR THE UNION:

(SGD.) J. RUDDICK
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. S. Fisher – Director, Labour Relations, Montreal
P. J. Orr – Manager, Rail Traffic Control, Macmillan Yard, Toronto

And on behalf of the Union:

J. Ruddick – General Chairman, Burlington
D. Charbonneau – Local Chairman, Toronto
D. Brady – Rail Traffic Controller, Toronto

AWARD OF THE ARBITRATOR

The Harbour Drawbridge, which opens up for ships traveling over the US/Canada border, is operated as a locally controlled interlocking system. It is around 135 years old. The duties of the Rail Traffic Controller (RTC), who occupies a perch on the bridge itself, is to “swing the bridge” in order to allow passage of the ships through the border. The Union noted that the TCRC represents RTC Level 1 to 4 in large rail traffic control centres but also in smaller centres such as Harbour Drawbridge and that these assignments date back over 20 years.

The permanent incumbent was the successful applicant for the bridgetender position when the position was advertised in 1985. Although he remains on the Union’s seniority list, he no longer performs work under the TCRC collective agreement and has not been represented by the TCRC. He has been represented over the years by the Transportation Communications Union (TCU), and subsequently today by the USW. On June 23, 2006 the Company advised the Union that the relief traffic controller positions at Harbour Drawbridge at Blackrock, New York would no longer be assigned to RTCs. The Employer’s position is that there was no longer a need to have an RTC do the bridgetender work.

The Union argues that the collective agreement allows in article 23 for relief workers to fill a vacant RTC 4 position. The Union further submits that this demonstrates a settled intention to provide a continuity of service to locations where TCRC members have been working, such as Harbour Drawbridge. The Employer submits in reply that the TCRC does not have exclusive jurisdiction over the relief work being performed at the Harbour Drawbridge nor is the extra-territorial work being performed covered under the **Canada Labour Code**.

The evidence before the Arbitrator is that train orders have not been handled at Harbour Drawbridge for over 10 years. With the retirement of one of two relief RTCs, the Employer determined that it no longer required an RTC to do the work.

In the view of this Arbitrator, the relief work being performed at Harbour Drawbridge does not belong exclusively to a member of the Union holding an RTC 4 position. Apart from the jurisdictional issues arising from work being performed outside of Canada, the work being performed at the Harbour Drawbridge is governed by the Interlocking Rules between the train crews and the bridgetender (signalman) as opposed to CTC rules that required supervision of train movements by an RTC. As the Employer points out, there is no operating or regulated requirement to have an RTC do the work of a bridgetender. Nor is this work spelled out in clear and unequivocal language as belonging exclusively to RTCs in the collective agreement.

As this office noted in **CROA 3081**:

... On the whole I am satisfied that the initiative of the Company falls within its prerogatives, and that there is nothing in the language of the collective agreement at hand which would give exclusive jurisdiction to the Brotherhood in respect of the work in question. In my view the case at hand is to be distinguished from the different facts reviewed by this Office in **CROA 804** and **805**. The Brotherhood’s claim cannot succeed on the basis that the work in question falls within its exclusive jurisdiction.

There is also no basis, in the view of the Arbitrator, to conclude that the nature of the work being done falls within the purview of an RTC. That is not the case here because the work being performed for years has been that of a bridgetender and not of a rail traffic controller. A bridgetender, as the evidence shows, does not need to have the expertise of dealing with train orders. Indeed, the permanent incumbent at Harbour Drawbridge does not perform rail traffic control work nor hold an assignment as a designated rail traffic controller. The majority of the duties being performed in the past by relief employees at Harbour Drawbridge are therefore not those that involve rail traffic control. As this Office noted in **CROA 3081**:

“... the Arbitrator has substantial difficulty concluding that the persons who will perform such functions can fairly be characterized as performing little other than duties exclusive to an RTC/operator”

The fact that the Employer has employed RTCs as relief employees over the years is also no foundation for an estoppel. The practice of employing RTCs drawn from the Union to do the work has suited the needs of both the Employer and the Union over the years. There is no evidence, however, that the Employer was committed to employing only RTCs at Harbour Drawbridge season after season, particularly given that the nature of the work was

that of bridgetender rather than rail traffic controller. In order to support an estoppel, the Union would have to adduce far clearer evidence of a commitment on the part of the Employer to man this small centre with only RTCs. That kind of evidence is not before the Arbitrator.

There is also no evidence of bad faith on the part of the Employer. The Employer decided to contract out a position upon the retirement of one of the relief workers. It had determined that the work being done no longer required the expertise of an RTC. That decision was not taken to target the remaining relief worker but was rather the result of a considered evaluation of the work needs at Harbour Drawbridge. The work for years did not really need a rail traffic controller given the absence of train orders. The Employer was therefore within its discretion to make the changes as it saw fit, even though it may have had an adverse effect on a long-term relief employee.

There is no need under the circumstances to deal with the Employer's objection as to the board's jurisdiction. While there seems to be some difference between the parties as to whether or not the Company had withdrawn that objection or just agreed to include the objection and merits in a single hearing, it came to the arbitration prepared to argue the merits and has been successful in doing so. There would be no cause served under the circumstances in trying to evaluate the scope of the jurisdiction of this office given the fact that the work being performed was in the United States. That issue can be left for another day.

The grievance is dismissed.

January 15, 2007

(signed) JOHN M. MOREAU, O.C.
ARBITRATOR