

CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION

CASE NO. 3976

Heard in Montreal, 9 February 2011

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Policy Grievance – the violation of article 22 of Agreement 4.2 as a result of the Company's unilateral decision to abolish all Traffic Coordinator positions at the terminal of Oshawa and the wholesale transfer of those core duties to others.

UNION'S STATEMENT OF ISSUE:

On or about July 10, 2009, the Company commenced the abolishment of all regularly assigned Traffic Coordinator positions at Oshawa. The Company, without serving notice as per Article 22 of Agreement 4.2 began the wholesale transfer of all core duties to other members of the Bargaining Unit and CN Management. This violates Article 22 amongst others of the Collective agreement.

In addition, the Union argues that the Company has violated Articles 2, 3, 4, 5, 9, 18, 19 and the Workplace Environment provisions of Agreement 4.2, the *Canada Labour Code*, CROA&DR jurisprudence and CIRB decision 315. Article 22 of Agreement 4.2 mandates that an agreement be reached, prior to the material change taking effect. The Company is in violation of Article 22 by not reaching an agreement prior to implementation.

The Company failed to respond to the Union's grievance in a timely manner as mandated in Article 32.1(c) of Agreement 4.2. As such it is the Union's position that the Company has forfeited its right to now advance any new positions in front of the Arbitrator.

FOR THE UNION:

(SGD.) J. M. ROBBINS  
GENERAL CHAIRMAN

There appeared on behalf of the Company:

S. Fusco	– Manager, Labour Relations, Toronto
D. Gagné	– Sr. Manager, Labour Relations, Montreal
B. Hogan	– Manager, Labour Relations, Toronto

D. Larouche – Manager, Labour Relations, Montreal

There appeared on behalf of the Union:

M. A. Church – Counsel, Toronto  
J. M. Robbins – General Chairman, Sarnia  
S. Ritskes – Local Chairman, Oshawa  
J. Foote – Former Yard Coordinator, Oshawa  
J. Blake – Former Yard Coordinator, Oshawa  
C. Roberts – Yard Coordinator, Oakville  
B. R. Boechler – General Chairman, Edmonton  
R. A. Hackl – Vice-General Chairman, Edmonton

### AWARD OF THE ARBITRATOR

The Union alleges that the Company has violated the collective agreement by assigning to trainmasters at Oshawa the core functions of work previously performed by Traffic Coordinators (Yardmasters) at that location. The Union submits that following the abolition of the Traffic Coordinator positions, notwithstanding that one daily yard assignment, as well as extra evening and weekend assignments, continue to be performed at Oshawa, which is a closed yard, the work previously performed by bargaining unit members is now being handled on a regular basis by trainmasters at Oshawa.

The material before the Arbitrator confirms that following the abolishment of the Yard Coordinator positions at Oshawa the Company purportedly assigned to Yard Coordinators at Oakville the responsibility for overseeing work in the Oshawa Yard. In essence, the position of the Company is that there is insufficient traffic and yard work at Oshawa to justify maintaining a traffic coordinator position at that location. It submits that the collective agreement is respected if, as has been implemented, the yard crews at Oshawa receive their switching lists from the traffic coordinator at Oakville, including any amendments to switching lists which may occur through the day, in addition to any additional information or notices concerning the yard or yard equipment of which they should be aware.

The evidence before the Arbitrator, however, does not sustain the Company's submission that in effect the yard crews at Oshawa are fully under the control and direction of traffic coordinators at Oakville. The unchallenged evidence of Oakville Traffic Coordinator Colin Roberts confirms that in fact he has very little decisional input into the daily management of operations within the Oshawa Yard and at the locations of

customers, the principal of them being General Motors. The testimony of Mr. Roberts confirms that while he does have some involvement in the arrival and yarding of incoming trains, in respect of which he receives communications from road crews and passes information on to the yard crew, he has little if any significant involvement in what is arguably the core function of the traffic coordinator.

Specifically, the preponderance of the evidence before me confirms that at Oshawa switch lists are now generally assembled and annotated by the local trainmasters. It appears that on a number of occasions such lists are communicated to Mr. Roberts who is then to re-process the same document into his own system for communication to the yard crews at Oshawa. The evidence tends to confirm that Mr. Roberts essentially receives from the trainmaster at Oshawa a completed switch list which he simply passes on to the crew working on the yard assignment, It does not appear disputed that the formulation of switch lists, and their ongoing revision throughout the day, is at the heart of the work strategy for the yard traditionally overseen by yardmasters, now called traffic coordinators.

Evidence was also given by Stephen Ritskes, an employee who worked as a traffic coordinator at Oshawa before all such positions were abolished, and who has worked since as a yard crew employee, sometimes at the Oshawa location. His evidence generally confirms the testimony of Mr. Roberts with respect to the current operations at Oshawa. By Mr. Ritskes' estimate, the trainmasters at Oshawa are now effectively performing 90% of the duties of the traffic coordinator.

The Union's first submission is that there has been a violation of the collective agreement by the simple misappropriation of bargaining unit work into the hands of management. Alternatively, its counsel submits that in abolishing all traffic coordinator positions at Oshawa the Company has in effect implemented a material change without giving the appropriate notice in that regard in conformity with article 22 of the collective agreement. The Company submits that in fact there is insufficient work at Oshawa to justify maintaining what would in effect be one traffic coordinator to oversee the work of two employees working a single yard assignment. Its representative submits that there is, in any event, a certain overlap between the functions of a yard coordinator and those of a trainmaster. Both, for example, might communicate with customers with respect to servicing their industrial plants or might deal with track forces with respect to maintenance work being conducted in the yard or at industrial locations.

This Office has had occasion to consider the issue of yardmasters' or traffic coordinators' work being assigned to management. AH 516, which concerned the abolishment of traffic coordinator positions at the Brampton Intermodal Terminal, contains an extensive review of the jurisprudence and principles which apply. In that case the Arbitrator followed a prior award of Arbitrator O.B., Shime in Re Ontario Hydro and Canadian Union of Operating Engineers, Local 1110 (1976), 12 L.A.C. (2nd). Among the comments of Arbitrator Shime at pp. 146-47:

In our view similar considerations apply to the instant case. Management cannot merely sprinkle or add management functions to bargaining unit work and thereby remove the bargaining unit positions from the bargaining unit because to do so would not only destroy the integrity of the bargaining unit, but the basis upon which the collective agreement was negotiated. Such acts, if permitted, could completely remove all of the work from the bargaining unit and thereby destroy the effect of the collective agreement. ...

The same case also quoted the following passage from the award of the arbitrator in CP Rail and United Transportation Union (Grievance re Revelstoke and Golden Yardmasters) (AH 258), an unreported award of Arbitrator Michel G. Picher dated May 8, 1989:

The issue in this grievance is whether the persons occupying the title of Assistant Supervisor Operations at Revelstoke and Golden in fact perform duties that would bring them sufficiently within the core functions of the Yardmaster's positions so as to fall within the collective agreement governing yardmasters. Arbitral jurisprudence establishes that an employer cannot avoid the terms of a collective agreement by merely renaming or reclassifying a position which continues to involve the performance of what are substantially the same duties and responsibilities as belonged to a bargaining unit position. This concept, which was articulated in Fittings Ltd. (1969) 20 LA-C. 249 (Weatherill) has been consistently recognized in CROA cases. In CROA 406, which involved a grievance between these same parties respecting yardmen's work Arbitrator Weatherill stated:

The collective agreement does not set out any definition of yardmen or yardmasters. This is not to say that those terms are not capable of definition. Generally speaking, it is surely true that the parties know very well which of their employees come under the collective agreements in question. Where the Company assigns an employee to carry out a set of tasks typical of those of a yardman or yardmaster, then that person must be said to be a yardman or yardmaster and subject to the appropriate agreement, and the Company bound by that agreement with respect to the assignment of the employee

(See also CROA 322, 337, 1655, 1803).

A number of arbitral awards have considered what percentage of involvement with bargaining unit work is necessary to bring a non-unit supervisor within its ambit. On this issue no clear consensus has emerged, if indeed one could be possible. In this arbitrator's view, however, it is helpful to ask two basic questions: does the non-bargaining unit supervisor perform the core functions of a job that has traditionally been within the bargaining unit? And are the additional functions performed by that person incidental or peripheral to the core function of the bargaining unit position, or do they constitute the core or main substance of the new

position? If the answer to the first question is affirmative, and it is clear that the non-bargaining unit functions are peripheral and do not represent the principal or core function of the newly established position, absent compelling evidence to the contrary, it may be concluded that the newly established position in fact falls within the bargaining unit.

How do the foregoing principles apply to the case at hand? While it is true, as the Company notes, that traffic volumes clearly did fall in Oshawa, to the point where a single yard assignment was being utilized on a daily basis, the fact remains that the whole panoply of yardmaster duties remained to be performed at that location. The material before me does not confirm that in fact those duties were properly transferred into the hands of traffic coordinators at Oakville, as the Company contends. For obvious practical reasons, there are limits to what an Oakville based traffic coordinator can do with respect to the management of the yard in Oshawa. Most significantly, the Oakville based traffic coordinator has no meaningful information or basis upon which to formulate switch lists, conduct related job briefings or make and communicate adjustments to switch lists as the situation on the ground changes throughout the working day. Those functions, which are arguably at the heart of the core functions of the traffic coordinator, are effectively performed by the trainmasters at Oshawa, albeit it appears that the switch lists and amended switch lists are passed on from the trainmasters to the traffic coordinator at Oakville for communication by fax to the yard crews in Oshawa. In my view that aspect of the Oakville traffic coordinator's work is to be little more than a conduit for the core functions which in fact been performed by the trainmaster, functions which are clearly at the heart of a yardmaster's responsibilities.

While I can appreciate the Company's wish to realize efficiencies in the face of reduced traffic volumes in the Oshawa Yard, it cannot on that basis alone disregard its obligations under the collective agreement. If there are sufficient functions of a traffic coordinator to be accomplished by maintaining a traffic coordinator's position the Company is under the obligation to maintain such a position. It cannot avoid that obligation by essentially transferring bargaining unit work into the hands of a manager. I am satisfied that in the instant case the work at the Oshawa Yard did, at the time of the job abolishments and at the present, constitute the core functions of a traffic coordinator's assignment. In essence, the trainmaster presently performs the core functions of the traffic coordinator's assignment while the Oakville traffic coordinator is relegated to performing peripheral traffic coordinator duties. Additionally, the unchallenged evidence is that for substantial portions of the day the Oakville traffic coordinator is otherwise occupied with a heavy burden of work at both Oakville and Aldershot, and remains unavailable by radio to service Oshawa. During those

periods, any functions which might otherwise be performed by the traffic coordinator are covered off by the trainmaster. When all of these facts are viewed together, the inescapable conclusion is that the Company has effectively shifted the core duties and responsibilities of a traffic coordinator's position at Oshawa into the hands of trainmasters at that location. That is something which it cannot do without violating the collective agreement, the very basis of which is to recognize that traffic coordinators are to perform traffic coordinators' work, on the terms and conditions agreed within the collective agreement.

In light of the foregoing conclusion, I do not consider it necessary to consider the alternative submission of the Union concerning material change. The grievance is therefore allowed. The Arbitrator declares that the Company has violated the collective agreement by assigning the work of traffic coordinators to trainmasters at Oshawa. The Company is directed to cease and desist from the performance of traffic coordinator work by trainmasters at Oshawa and is directed to make such assignments as may be necessary to have the traffic coordinators' work in relation to the Oshawa Yard performed by traffic coordinators under the terms of the collective agreement. As requested by the Union I retain jurisdiction in the event of any dispute between the parties concerning the interpretation or implementation of this award, as well as to deal with any outstanding make whole issues, if appropriate.

February 14, 2011

(signed) MICHEL G. PICHER  
ARBITRATOR