

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

CASE NO. 4567

Heard in Montreal, July 11, 2017

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Abolishment of Traffic Coordinator Position(s) at Southwark Yard and assigning scheduled work to management personnel in the terminal of Montreal.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On/or about November 7, 2008 the Company advised the Local Representatives of their intention to abolish all the Traffic Coordinator positions at Southwark Yard. The Company in an email advised that the abolishment(s) were as a result of a reduction in freight service.

Since the abolishment of the Traffic Coordinators the Company has increased the amount of Management personnel at Southwark Yard.

It is the Union's position that the Company blatantly and indefensibly violated Articles 22.1 along with appendix AJ of the 4.2 Collective Agreement.

The Union is seeking an order that the Company cease and desist from the violation of Articles 22.1 along with appendix AJ of the 4.2 Collective Agreement.

The Union seeks to have the Company re-establish the Traffic Coordinator assignments at Southwark and that the Company, compensate any/all individuals (4.2 and/or 4.16) effected by the Company's blatant and indefensible violations of the 4.2 Collective Agreement.

The Union is seeking a significant remedy in accordance with Addendum 19 of the 4.2 Collective Agreement in this instance as the Company continues to violate the Collective Agreement.

The Company disagrees with the Union's contentions and declines the Union's request.

FOR THE UNION:
(SGD.) J. Lennie for J. Robbins
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

A. Daigle	– Manager Labour Relations, Montreal
D. VanCauwenbergh	– Director Labour Relations, Toronto
G. Belanger	– Retiree, Former Trainmaster, Southwark
D. Parent	– Retiree, Former Trainmaster, Southwark

C. Michelucci	– Director Labour Relations, Montreal
M. Boyer	– Senior Manager Labour Relations, Montreal
S. Roch	– Manager Labour Relations, Montreal
L. Williams	– Manager Labour Relations, Toronto

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
G. Gower	– Vice General Chairman, Toronto
J. Lennie	– Local Chairman, Port Robinson
J. F. Bédard	– Local Chairman, YDM, Montreal
S. Gosselin	– Vice Local Chairman, CTY, Montreal
J. G. Besner-Richer	– Vice Local Chairman, LE, Montreal

AWARD OF THE ARBITRATOR

On January 5, 2009, the Union grieved the Company's alleged abolishment of all the Traffic Coordinators positions at Southwark yard and transferring of their work to management personnel. During a meeting on March 12, 2009, the Employer declined the grievance and, two months later, on May 13, 2009, the Union notified its intention to file for arbitration. However, the Union did not further pursue the grievance process until June 29, 2015, some seven years later, when it submitted a proposed Joint Statement of Issue through GTS. On August 28, 2015, the Union filed for hearing on an Ex Parte basis.

Evidence of the Union

Southwark yard, which is also called St-Lambert, has had Traffic Coordinators and transportation employees working there for many decades. The former always played an important role in the yard's activities, coordinating all train and yard movement, including the assignment of all the train crews operating in the yard. They would also arrange various yard activities such as track protection for other departments working there. In the past, Trainmasters did not perform any of the traditional Traffic Coordinator duties.

In November 2008, there were three Traffic Coordinators assigned at Southwark yard on a regular basis. That includes the regular day and afternoon shifts and a regular relief job.

However, throughout 2008, due to a recession and slump in the economy, traffic volume started to go down at Southwark. As such, the Company notified the Union that the Traffic Coordinator positions at Southwark would be abolished, which it completed by January 2009.

Despite that activities regressed at St-Lambert, there were still train crews operating in the yard. Nevertheless, Traffic Coordinators were not called for work. Instead, the Company had Trainmasters accomplish their core duties: reviewing and preparing the switchlists, reporting of cars movement in the SRS system and monitoring train crew assignments.

The Union has adduced several switchlists covering the period from late November 2008 to July 2009. The lists show that different Trainmasters printed the lists during that period. Some of the switchlists adduced have been manually revised; some of the modifications are from Trainmasters, while some are from other personnel.

The increased number of Trainmasters in the yard following November 2008 shows that the work that used to be done by Traffic Coordinators at Southwark is now accomplished by management.

Evidence of the Company

The Company's installations in the Greater Montreal Area are divided into four terminals. A main yard, at Taschereau, surrounded by three satellite yards: RDP (East end of Montreal), Coteau (near Valleyfield) and Southwark (on the South shore of Montreal).

Late in 2008, the Company experienced a downfall of activity at the St-Lambert yard. During the hearing, the Company adduced a document showing that the number of cars transiting through the yard fell from 962 per month in early 2008 to an average of 350 per month during early 2009. As such, CN implemented a new operating plan in order to enhance its activities' efficiency in the Greater Montreal Area. The plan included transferring operations from Southwark to Taschereau, including all assignments.

As assignments had been transferred to the main yard at Taschereau, the Company did not require a Traffic Coordinator (or Yardmaster) position at Southwark anymore. Instead, the workload was transferred to Taschereau and incorporated into the East Tower. All road positions were transferred at Taschereau and so was the yard work.

Company records show that as of January 1, 2007, there was one Traffic Coordinator working at St-Lambert, Mr. Ben Lemay. He was overseeing the yard assignment and the four Road Switchers that were based at Southwark at the time.

As of November 1, 2008, Mr. Lemay had been replaced by Mr. Bobby West at Southwark. Company records show that in March 2009, Mr. West was now occupying a newly created position at Taschereau and that no Traffic Coordinator position remained at Southwark. Mr. West's was paid at a higher rate than when he worked at Southwark, a tier 3 yard, since Taschereau is a tier 2 one.

Prior to the operation, and throughout the implementation, two Trainmasters, Mr. Denis Parent and Guy Bélanger, were assigned to Southwark. Two additional supervisors were also assigned temporarily during that time for training purposes. Also at the time, Mr. Parent was being shadowed for a few weeks by Mr. Michel Lapierre, who was to replace him after. The Company asserts that while the Trainmasters' presence overlapped with the implementation of the plan, the formers were not involved in the latter.

The Trainmasters that were present at the hearing also confirmed that, prior to the implementation of the Company's plan, when there were no Traffic Coordinators available on site, such as in the evening, they would manage car movements themselves.

Analysis and Decision

The Union asserts that the Company failed to advise them of a material change, as requested under Article 22 of the 4.2 Agreement. Moreover, the Company is not allowed to transfer the work of the Traffic Coordinators to non-unionized members of management.

The Company argues that it was not under any obligation, stemming from the 4.2 Agreement, to advise the Union of a material change, as the 2008-2009 reorganization falls under the article 22.1 k) exception of the Agreement. Additionally, the Union has failed to prove that the Employer's decision resulted in any loss of employment or significant adverse effect. Finally, there is no evidence that Traffic Coordinators duties were transferred to the Trainmasters at Southwark.

Article 22 of 4.2 Agreement reads, in part, as follow:

ARTICLE 22 Material Changes in Working conditions

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.

Exception:

(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.”

In **CROA&DR 2893**, Arbitrator Picher dealt with a similar case in which, due to a change in freight operations, a yard assignment was eliminated. The Arbitrator had to decide whether that constituted a material change or if it was rather a normal operational change inherent to the nature of the work in which employees are engaged. Citing two previous **CROA&DR** cases, **332** and **1444**, the Arbitrator stated:

“In the Arbitrator’s view, while the precedent cases are not precisely the same as to their facts, the principles which they reflect do properly apply to the case at hand. In this case the trains previously made up by a yard crew at Englehart are to be made up in North Bay. Other road and yard assignments remain available at Englehart, although one yard assignment was eliminated at the change of timetable in the spring of 1996, as a result of the administrative adjustment made by the employer. In my view, in light of the prior jurisprudence reviewed above, the adjustments implemented by the Company are well within the contemplation of sub-paragraph (i) of article 53, involving as they do a reassignment of work at home stations and changes which are normal and inherent in the nature of the work of locomotive engineers.”

Indeed, the possibility for an employer to implement changes that are inherent to the efficient operation of a railway company has been recognized in other decisions and is a long-standing principle that, when applicable, has been upheld by this Office’s jurisprudence.¹

In **CROA&DR 3404**, the Company had, following a reorganization of the Greater Montreal Area’s Traffic Coordinators’ workload, shifted some of the work from Taschereau yard to Southwark. The Union grieved the resulting loss of Traffic Coordinator positions at Taschereau. Arbitrator Picher dismissed the grievance and stated:

“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

¹ See: **CROA&DR 1167, 2070 and 3142**

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&DR 332, 1444, 2893, 3142, 3143, and 3332**).”

This case bears great resemblance to the present one. The evidence adduced before this Tribunal demonstrates that the Traffic Coordinator position that existed in St-Lambert was transferred to Taschereau yard following the implementation of the Company’s plan. CN’s records show that Mr. West had been, contrary to the Union’s assertion, the sole Traffic Coordinator at Southwark in November 2008. The same records demonstrate that Mr. West has been transferred to Taschereau as of March 2009.

The transfer of a single position from one yard to the other within the Greater Montreal area falls squarely within the exception laid out in article 22.1 (k) and established in **CROA&DR 3404**.

Moreover, the Union had the onus of proving any adverse effect caused by the alleged material change, as stated by Arbitrator Picher in the pre-cited **CROA&DR 2893**:

“Moreover, it is not entirely clear to the Arbitrator that there has in fact been any adverse impact on any employee at Englehart. In a case of this kind it is incumbent upon the Brotherhood to show an actual loss of work opportunities, and/or a real loss in earnings potential, to an employee by reason of the alleged material change. No such evidence of a concrete nature is adduced before the Arbitrator in the instant case.”

The facts of the present case lead me to conclude that the Union failed to present evidence of any adverse effect resulting from the Company’s reassignment.

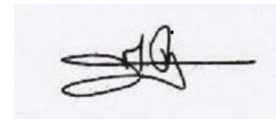
As for the Union's second argument regarding the transfer of the Traffic Coordinators' work to management personnel, it must also fail. Although it is a well-established principle that the Company cannot shift substantial functions of a bargaining unit to a person outside the unit², there must be evidence adduced to demonstrate such a transfer.

The switchlists, brought forth by the Union, only indicate that the Trainmasters were printing them and, occasionally, manually revising certain manoeuvres. It does not show that evidence that the Trainmasters have replaced the Traffic Coordinator's work at Southwark, let alone substantial part of it, as would be required by the jurisprudence of this Office³.

Furthermore, as the Trainmasters indicated during the hearing, coordinating traffic in the yard was not a task exclusive to the Traffic Coordinator position. As a matter of fact, when the Traffic Coordinator was absent from the yard, during the evening, for instance, he would then be relayed by the Trainmasters.

Thus, for all of the above-mentioned reasons, the grievance must fail.

July 25, 2017



**MAUREEN FLYNN
ARBITRATOR**

² See **AH516**

³ See **CROA&DR 2169**