CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 804

Heard at Montreal, Tuesday, January 13, 1981

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim by the Brotherhood that certain positions of "Transportation Operator" formerly designated "TRAC Operator", at Calder Yard, Edmonton, Alberta, in Agreement 7.2, be placed within the scope of Agreement 5.1.

JOINT STATEMENT OF ISSUE:

Certain positions of "Transportation Operator" formerly designated as "TRACS operator" in the Chief Dispatcher's Office, Calder Yard, Edmonton, Alberta, and covered by Collective Agreement 7.2 (B.R.A.C.) are claimed by the Brotherhood as falling within the scope of Agreement 5.1 (C.B.R.T. & G.W.).
The Company has denied the claim.

FOR THE EMPLOYEES:

(SGD.) J. D. HUNTER
NATIONAL VICE PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE
VICE-PRESIDENT-LABOUR REL'S

There appeared on behalf of the Company:

J.A. Fellows -- System Labour Relations Officer, CNR, Montreal
R.A. Groome -- Labour Relations Assistant, CNR, Montreal
R.J. Gemmell -- Employee Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

W. Apps -- Regional Vice-President, C.B.R.T. & G.W., Vancouver
H. Critchley -- Representative, C.B.R.T. & G.W., Edmonton

AWARD OF THE ARBITRATOR

By Article 2.1 of the Collective Agreement, the Company recognizes the Union as bargaining agent for "all classes of employees

enumerated in Article 10", this being "subject to the exceptions enumerated in Appendix I". By Article 10.5 it is provided with respect to the Mountain Region that the seniority grouping includes "clerical employees" in the office of the Chief Dispatcher.

The position of "Transportation Operator" is one in the office of the Chief Dispatcher, and it appears that it is, in general, a clerical position. It would, therefore, come within the bargaining unit unless it is excluded by reason of being enumerated in Appendix I. Appendix I to the Collective Agreement excludes from the bargaining unit a number of specifically designated positions. As well, it sets out a general exclusion of "those employees on the entire System exercising train order skills and handling telegraph message traffic". It is the Company's position that Transportation Operators come within that exclusion. They are, in fact, treated as members of another bargaining unit and subject to the terms of another Collective Agreement. The issue before me, however, is one arising only under Collective Agreement 5.1. It may nevertheless be observed that by a certificate dated May 21, 1980, the Canada Labour Relations Board granted certification to the other bargaining agent referred to in respect of this classification. No arguments were addressed to this point, but I would express some doubt as to my jurisdiction to make an award which would have an effect contrary to that of a certificate of the Canada Labour Relations Board, except perhaps where intervening circumstances revealed an agreement by all affected parties as to the scope of the bargaining unit. I do not now purport to make any determination of such a question.

It is not likely that the Transportation Operators would properly be said to be engaged in "handling telegraph message traffic". They do, it appears, handle message traffic of a sort which was formerly sent by telegraph, that is by Morse Code operators. Now it is sent by electronic communication devices, and the transmission skills required are of a different order. It would be my view (although again the matter was not argued) that the reason for an exclusion of employees "handling telegraph message traffic" related to the skills involved and not to the nature of the material dealt with. This would not be a case of the same work carrying on despite a series of technological changes. From this aspect, I should think that the work had become essentially "clerical" in the sense of coming within the scope of this bargaining unit. I do not make any final decision on this point.

I am, however, of the view that the employees in question "exercise train order skills". This means not merely transcribing and delivering train orders as such, but rather (and here the Operator's work may vary from one location to another), the compiling of reports on the basis of an analysis of information on trarn dispatchers' control sheets, train order books, and pen graphs. This particular reporting function is one calling for familiarity with and understanding of train orders, and qualification in the Uniform Code of Operating Rules. These are "train order skills" and they must be exercised, to a significant degree, by Transportation Operators.

I note as well that the Transportation Operator is responsible for monitoring tapes in the absence of the Hot Box Detector Operator. That, as I understand it, is a function of the Transportation

Operator's job (that is, he remains a Transportation Operator while performing such work). The Hot Box Detector Operator, as such, comes within the scope of Collective Agreement 7.2. The mere fact of being subject to transfer to another classification is not, in itself, a task forming part of the job of Transportation Operator and would not be a material consideration. But where, as here, work coming within the scope of another Collective Agreement is part of the task itself (as in the case of Hot Box Detector work), then that is a material consideration.

For the reasons set out above, it is my conclusion that the Transportation Operators exercise train order skills to a significant degree. That being the case, it must be concluded that the position comes within the exclusions set out in Appendix I to the Collective Agreement, and that it is, therefore, excluded from the bargaining unit.

Accordingly, the grievance must be dismissed.

J.F.W. Weatherill
Arbitrator