CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1167

Heard at Montreal, Thursday, December 22, 1983

Concerning

CANADIAN NATIONAL RAILWAYS
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Canadian National Railway created a new class of service called Flying Crews at Montreal.

EMPLOYEES' STATEMENT OF ISSUE:

On March 15, 1983, the Company notified the Local Chairman at Montreal that around the 21st - 28th of March 1983 or at a later date. The intentions proposed were as follows:

1. All the road engine crews would tie up and start to work at Central Station.

2. That the flying crews would handle all passenger trains from the coach yard, Pointe St. Charles Diesel Shop, Cancar and Central Station or vice versa.

The Union position is that:

1. This change is viewed as a material change and would have significant adverse effects on Engineers. The Company must serve notice in accordance with Article 114.1.

2. By implementing the flying crews concept the Company is violating C.T.C. Regulation General Order No/0-10, Articles 508 - 509, plus a number of Articles in Agreement 1.1 and changes in conditions that have been long standing practices.

The Company position is that:

1. The Company has the unrestricted right to implement the changes and that Article 114.1 does not apply in this case.

2. Should there be a reduction in the number of yard assignments because of changes in passenger service the provisions of the VIA Special Agreement apply.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
General Chairman

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, M?ntreal
M. Delgreco	- Senior Manager, Labour Relations, CNR, Montreal
P. J. Thivierge	- Manager Labour Relations, CNR, Montreal
J. A. Sebesta	- Co-ordinator Transportation - Special Projects, CNR, Montreal
Jean Guy Ouellette	- Trainmaster, CNR, Montreal

And on behalf of the Brotherhood:

P. M. Mandziak	- General Chairman, BLE, St. Thomas
C. Hamilton	- Local Chairman, Local 89, BLE, Montreal

AWARD OF THE ARBITRATOR

The issue in this case is whether the company's proposal to introduce "the flying crew" concept at Montreal's Central Station was the type of "material change" in working conditions resulting "significantly" in adverse effects on engineers for purposes of obliging the company to give six months advance notice of the said changes under Article 114.1(b) of the collective agreement. The relevant provisions of the collective agreement read as follows:

> "114.1 Prior to the introduction of run-throughs of changes in home stations, or of material changes in working conditions which are to be initiated solely by the Company and would have significantly adverse effects on engineers, the Company will:
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> (a) negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay, and
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> (b) give at least six months advance notice to the Brotherhoodof any such proposed change, with a full description thereof along with details as to the anticipated changes in working conditions.
>
> (i) The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 14 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in

> traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which engineers are engaged."

The background circumstances leading up to this dispute are relatively straightforward. The company's past practice was for road engineers on passenger runs leaving and terminating Montreal's Central Station to leave and/or pick up their trains at the company's maintenance yards at Ville St. Pierre and Pointe St. Charles, P.Q. Road engineers and their crews are entitled to an amount of money for time spent transferring the trains to and from the company's yard to the Central Station (see Articles 9.1 and 10.1 of the collective agreement). For the business reasons that were not disputed by the trade union the company decided to make a radical change in this procedure.

The company proposed and eventually implemented (after failed negotiations) the following changes in procedure. Henceforward the responsibility for road engineers in the handling of their runs was to both commence and terminate at Central Station. Yard engineers were then to assume the functions formerly performed by the road engineers of transferring the locomotives and passenger cars to and from the maintenance yards at Ville St. Pierre and Pointe St. Charles. Essentially what was proposed was the reassignment from the road engineers to the yard engineers the functions of bringing to and taking away the trains from Central Station. Both road and yard engineers are members of the same bargaining unit.

The effect of these proposed changes on the road engineers was obvious. They were no longer eligible for payment of the monies allowed them under Articles 9.1 and 10.1 of the collective agreement for the performance of the work in question. In a like fashion yard engineers who now performed the said function were required to work without receiving additional compensation (other than their regular premium) for the discharge of these responsibilities. In addition, the trade union itemized several inconveniences (such as working in inclement weather) that would now be visited upon the yard engineers. In this sense the term "flying crew" was secured from the requirement that the yard engineers be available for the performance of the said functions wherever their services were needed. These duties may very well necessitate the requirement for taxis to take the yard engineer to locations where operational requirements dictated.

In order for the notice requirements contemplated under Article 114.1(b) to be invoked the onus rests on the trade union to establish two factors:

> 1) The trade union must demonstrate that the alleged changes in working conditions initiated by the company are "material" changes. And in determining whether a proposed change is "material" special regard must be paid to the exempting provisions contained in Article 114.1(i) of the collective agreement.
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> 2) The trade union must also establish that the

> proposed changes if implemented would not only have an adverse effect on the affected employees but such changes must bear a "significantly" adverse effect on the engineers.

In considering the first factor I am satisfied that the term "material changes in working conditions" acquires its meaning from the introductory phrase of Article 114.1. The type of changes contemplated, in other words, must be of such a nature to approximate the technological changes anticipated "in the introduction of run-throughs or changes in home stations". And even if such proposed changes approximate this type of serious transformation in working conditions the exempting provisions contained in Article 114.1(i) enable the company, where appropriate, to escape the requirements for advance notice. More particularly, the mere reassignment of work at home stations or other normal changes inherent in the nature of the work in which engineers are engaged would not give rise to the advance notice requirements contemplated by Article 114.1 (b).

In considering the second factor referred to above I am also satisfied that it would not suffice for the trade union to show that the engineers involved were merely adversely affected by the proposed changes. The trade union must demonstrate "significantly" adverse effects. That is to say, it must be established that such proposed changes in working conditions will have the adverse effect of rendering the engineer redundant or superfluous to the company's manpower exigencies or otherwise undermine his job security. In arriving at this conclusion special regard must be paid to Articles 114.2 and 114.3 which allow, in appropriate circumstances, "relocation expenses" and "early retirement allowances" for employees who have been "significantly adversely affected" by the employer's proposed changes. In other words, "significantly adverse effects" acquires its meaning in the context of Article 114 when read in its entirety.

In having regard to the objective of Article 114 of the collective agreement and the particular language contained therein I am satisfied that the trade union, in the circumstances described, has not demonstrated a case warranting the employer to invoke the notice provisions under Article 114.1(b). I am not satisfied that the changes proposed by the employer represent a "meaningful" change in working conditions. In short, the changes proposed in no manner equate with the technological changes that are represented for example by "introducing a run through". And, even if I were satisfied, such changes because they represent "a reassignment of work...inherent in the nature of the work in which engineers are engaged" would be exempted from the notice requirements under Article 114.1(b). In sum, it seems to me, given the nature of the changes proposed, they do not represent "the material change in working conditions" that ought to be allowed to upset the employer's general prerogative of operating its enterprise in an efficient and businesslike manner.

In any event, I do not doubt that, owing to the loss of certain pay entitlements by the road engineers and the added duties that must be performed by the yard engineers certain employees have been adversely affected by the changes. However, such adverse effects in my view

would not necessarily give rise to the notice requirements under Article 114.1(b). The employees affected have not been made redundant or superfluous to the company's operational needs or have otherwise had their job security undermined. Indeed, based on the material presented the result of the implementation of the proposed changes have increased the employer's manpower requirements.

Incidentally, I have noted that the trade union has alleged several infractions of numerous provisions of the collective agreement in its brief should the company's proposed changes be allowed. In my view the appropriate manner in which such allegations should have been treated by the trade union is by way of separate grievances that could be dealt with in an appropriate manner under the grievance procedure. I do not find that such allegations of any relevance to the principal allegation of whether the company's proposed changes ought to have given rise to the advance notice requirements provided under Article 114.1(b) of the collective agreement.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.