CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1221

Heard at Montreal, Thursday, March 8, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim by the Brotherhood that the Company has violated both Article 8.1 of the Supplemental Agreement dated 26 April, 1982 and paragraph 28.9 (1) of Article 28 of Agreement 5.01 when it abolished seven positions at its Cleaning Plant facilities at MacMillan Yard, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

On 13 August, 1982, the Company abolished the positions of two Classified Labourers and five labourers at its Cleaning Plant facilities at MacMillan Yard. The Brotherhood contends that these positions were abolished due to a technological, operational or organizational change instituted by the Company, and three months' notice was required pursuant to paragraph 8.1 of' Article 8 of the Supplemental Agreement dated 26 April, 1982. The Brotherhood also contends that the change involved the transi:er of the work of fueling and heaters in insulated rail box cars from employees within the bargaining unit to employees in another bargaining unit in violation of paragraph 28.9 (1) of Article 28 of Agreement 5.01.

The Brotherhood requests that the seven positions abolished on 13 August, 1982 be re-instated and that the Company make whole any loss of wages or benefits sustained by Messrs. J. Fleming, E. Longstaff, I. Ferrante, C. Smith, D. Brighton, J. Shreeve and V. Vancardo. The Brotherhood further requests that the work of fueling heaters in insulated box cars at MacMillan Yard be performed by members of the bargaining unit.

The Company has denied both requests.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:
W. W. Wilson - Manager Labour Relations, CNR, Montreal

S. A. MacDougald	- System Labour Relations Officer, CNR, Montreal
J. Bart	- Labour Relations Officer, CNR, Toronto
J. Dunn	- Labour Relations Officer, CNR, Toronto
G. Hurlbut	- Foreman, Car Dept. MacMillan Yd., CNR, Toronto

And on behalf of the Brotherhood:

T. N. Stol	- Representative, CBRT&GW, Toronto
A. Miloff	- Local Chairman, CBRT&GW, Toronto

AWARD OF THE ARBITRATOR

In this grievance it was clearly established that the abolition of the two classified labourers and five labourers' positions at the Company's Cleaning Plant facilities at its MacMillan Yard was caused by "the fluctuations in traffic" occasioned by the downturn in the company's business. As such neither an operational nor an organizational change took place that would warrant as alleged by the trade union the invocation of the notice provisions of paragraph 8.1 of Article 8 of the Supplemental Agreement.

What the evidence did indicate, however, was that the two classified labourers whose jobs were abolished participated in fueling functions as part of the performance of their overall duties and responsibilities. This is acknowledged in part in the company's reply dated February 14, 1983 to the trade union's allegation of a violation of Article 28.9(1) of the General Agreement:

> "Although the gang assigned to the former Yellow Route operation was involved in more than fueling, it might be said that its abolition was only feasible due to the change in the fueling operation. To this extent the Brotherhood's claim is allowed. At this time we are only able to identify two positions...."

The company at a later stage in the grievance proceedings attempted to "cancel" its admission made in the aforementioned reply. It cannot be allowed, however, to renege on its position. As a result, I am satisfied that the two classified labourers' positions involved in the refueling process were improperly abolished and transferred to Carmen represented in a different bargaining unit. In this regard the company is obliged to give effect to its admission and to restore to the two incumbents occupying the classified labourer's positions their entitled jobs.

Insofar as the five labourers are concerned I am satisfied that the abolition of their positions had absolutely no application to any organizational change that would render relevant any of the job security provisions of the collective agreement.

For the foregoing reasons the grievance is in part successful. I

shall remain seized for the purposes of implementation.

DAVID H. KATES,
ARBITRATOR.