CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1262

Heard at Montreal, Thursday, June 14, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The Company's notice dated Decem?er 30, 1983, issued pursuant to Articles 114 and 89 of Agreements 1.1 and 1.2 respectively.

COMPANY'S STATEMENT OF ISSUE:

On December 30, 1983, the Company served notice on the Brotherhood as provided for by Article 114.1 of Agreement 1.1 and Article 89.1 of Agreement 1.2, that it intended to implement certain changes in the operation of the Company's hump yards which would have adverse effects on locomotive engineers.

The Brotherhood objects to the notice because it is non- specific and deals in generalities.

The Company disagrees with the Brotherhood's position.

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. Giard, c.r.	- General Counsel, CNR, Montreal
M. Delgreco	- Senior Manager Labour Relations, CNR, Montreal
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
J. A. Reoch	- Chief of Transportation, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation, Special Projects, CNR, Montreal

And on behalf of the Brotherhood:

Maurice Wright, Q.C.- Ottawa

John B. Adair	- Canadian Director, BLE, Ottawa
J. P. Riccucci	- Executive Asst. to Canadian Director, BLE, Montreal
J. W. Konkin	- General Chairman, BLE, Winnipeg
G. Thibodeau	- General Chairman, BLE, Quebec
G. N. Wynne	- General Chairman, BLE, Montreal
P. M. Mandziak	- General Chairman, BLE, St. Thomas

AWARD OF THE ARBITRATOR

The issue is whether the company's notice dated December 30, 1983, of a proposed material change in the operation of the company's five "hump yards" complied with the requirements for "a full description" as contemplated under Articles 114.1 and 89 of Agreements 1.1 and 1.2 respectively. Article 114.1(b) reads as follows:

> "114.1 Prior to the introduction of run-throughs or 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:
>
> (b) give at least six months advance notice to the Brotherhood of any such proposed change, with full description thereof along with details as to the anticipated changes in working conditions.
>
> While not necessarily limited thereto, in the case of run-throughs, and in the case of other changes where applicable, the matters considered negotiable will include the following:
>
> 1) Appropriate timing
> 2) Appropriate phasing
> 3) Hours on duty
> 4) Equalization of miles
> 5) Work distribution
> 6) Appropriate accommodation
> 7) Bulletining
> 8) Seniority arrangements
> 9) Learning the road
> 10) Use of attrition

The company's letter dated December 30, 1983 to three officers of the BLE with respect to the intended implementation of its "Hump Yard Improvement Plan" represented the notice requirement of Article 114.1 and 89.1 of Agreements 1.1 and 1.2 respectively. The technical aspects of the material changes were explained to the trade union representatives at a meeting in Montreal on December 1, 1983, and were followed by other meetings after the notice was received. The timetable for phasing in the changes, the number of positions adversely affected by the changes at the five "hump" yards and the sequential order for implementation of the change were fully disclosed. The target date for the implementation of the first material change at the Symington Hump Yard was scheduled for

mid-1985. At that time approximately 9 positions are intended to be abolished. By the time the intended material changes are completed in 1990 approximately 37 positions will be abolished. Accordingly "the adverse effects" contemplated by the material changes are self-evident.

The trade union's complaint does not appear to relate to any suggestion that the company is purposely withholding relevant informatr that is relevant to the notice requirements of Article 114.1 (b). Rather, the complaint relates to the difficulties anticipated in negotiating the adverse effects to the employees concerned because the company, at the time the notice was communicated, cannot identify those employees. Apparently, the bidding procedures contemplated under the collective agreement for occupying positionsat the "hump yards" are exercised frequently at intervals of six months or less. Obviously, a material chang that is intended to span a period of approximately five years would not enable the company to provide in advance the specific names of the employees affected. The company quite candidly admits this inability in its communications with the trade union.

Can it accurately be said, as the trade union has charged, that the notice is thereby "non-specific and deals in generalities" thereby warranting its refusal to engage in negotiations? In this regard, the trade union alleges that it simply cannot discuss the issues at negotiations designed to mitigate adverse effects as are particularized under paragraphs (1) to (10) of Section 114.1 (b) without knowing the employees whose positions are alated to be abolished.

I find the trade union's charges without merit. The objective of the material change provisions under Article 114.1 is to provide the trade union with the maximum amount of advance notice that may be practically possible with respect to a contemplated material change. In this regard the collective agreement contemplates advance notice of "at least six months". In this case the company has given the trade union notice of an intended material change in December, 1983, that is scheduled for implementation in mid-1985 and that is to span a period of approximatel five years. The obvious objective of the notice is for the ongoing negotiation and mitigation of the adverse effects of that material change over that time period.

Although the trade union is bereft of relevant information with respect to the identities of the employees who may be adversely affected by the abolition of approximately 37 positions, I am not satisfied that this deficiency represents an insuperable obstacle to the negotiation of the adverse effects with respect to employees. The problem raised by the BLE is not one relating to a shortcoming in "the full description" of the notice. The company has made the fullest disclosure of whatever information it has in its possession. Indeed, the trade union has congratulated the company on this aspect of its meeting its contractual obligations. Rather, in my view the problem raised is one that pertains to the resourcefullness of both parties to the negotiation process.

If I understand the trade union's complaint accurately, it is reluctant, owing to the prolonged period involved before the material

changes are completed, to com?it its members to a negotiated settlement of an adverse effect when it does not know the specific individuals whose jobs are in jeopardy. It seems to me that this particular concern can be met by negotiating a specific proviso to any such settlement that would enable the trade union to "reopen" the settlement, if necessary, upon learning of the identities of the employees concerned. Moreover, if I appreciate the issues that may be raised during such negotiations the identities of the specific employees adversely affected may very well become academic. If, for example, the trade union can achieve the company's commitment to a permanent job security provision during the course of its negotiations then such concerns may very well disappear. In other words, the trade union's misgivings, albeit a legitimate response to the company's notice, can be addressed during the course of subsequent negotiations or any of the remaining procedural phases of the technological change provisions of the collective agreement. As I have suggested the trade union's stated concerns pertain to the ingenuity that may be applied by both parties to the negotiating process in overcoming an admitted information gap. In no manner, however, does this particular shortcoming warrant any delay in commencing negotiations because of any alleged "defect" in the notice.

From an entirely different perspective, let us assume that the trade union's allegations are warranted. The co?pany would as a result have to wait, having regard to the nature of the bidding procedures for the assignment of positions, until named individuals occupy the prospectiv redundant positions before proper notice under Article 114.1 (b) may be effected. If the company were to await that moment it might very well expose itself to a charge of an "untimely" notice. That is to say, given the very frequent turnover of assignments under the bidding procedures the company may very well find itself accused of failing to give the trade union "at least six months advance notice" of the material changes.

In other words, the unattainable demands for information being made by the trade union upon the company for the purpose of meeting I obligations under Article 114.1 (b) of the collective agreement would render the procedures contemplated by that Article for mitigating the adverse effects of such change both illusory and meaningless. The objective of Article 114.1 is not intended to enjoin the implementation of a material change. Rather, its purpose is to facilitate such change to the mutual satisfaction of both parties.

In short, I am satisfied that the company has met its obligation for Notice under Article 114.1 (b) of the collective agreement and I so declare.

For purposes of clarity, my declaration is not intended to encompass any issue, question or other matter relating to the proposed material change for which an Arbitrator under Article 114.1 (b) would not have jurisdiction.

DAVID H. KATES,
ARBITRATOR.