

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1591

Heard at Montreal, Tuesday, December 9, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Alleged violation of Article 79 - Material Changes in Working Conditions - of Agreement 4.16, when the 0800 Yard Assignment at Sudbury, Ontario was abolished.

JOINT STATEMENT OF ISSUE:

On December 3, 1982, the 0800 assignment at Sudbury Yard was abolished.

The General Chairman submitted a grievance dated February 10, 1983 contending that the Company was in violation of Article 79 by not serving formal notice of a material change in working conditions.

The Company declined the grievance on the basis that Article 79 was not applicable to the abolition of the 0800 assignment at Sudbury Yard.

FOR THE UNION:

(SGD.) R. A. BENNETT
General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

J. B. Bart	- System Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
C. St. Cyr	- System Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
D. J. Nunns	- Trainmaster, CNR, Capreol

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
R. Byrnes	- Local Chairman, UTU, Capreol
T. G. Hodges	- Vice-General Chairman, UTU, Toronto
R. J. Proulx	- Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

In 1981 there were five yard and one road switcher assignments in the Sudbury Switching Yard. With the economic recession of the early eighties there was a progressive downturn locally in the volume of freight caused by the reduction and eventual temporary shutdown of mining operations in Sudbury. Between October of 1981 and December of 1982 each of the five yard switcher assignments was eliminated, one by one. Only road switcher No. 598 was retained to perform the minimal yard switching service remaining plus the normal transfer of cars between Sudbury and Capreol.

The first aspect of the Union's grievance concerns the assignment to the road switcher of the work of the last yard switcher, referred to as the 0800-1600 yard assignment. The second aspect of the Union's complaint concerns what followed. With the upturn of the economy in the Spring of 1983, and the resurgence of mining operations in Sudbury it became necessary for the Company to restore service to the Sudbury switching yards. It did so, however, by establishing only one yard assignment the 0730 assignment, and two new road switchers - Nos. 594 and 599. In the aggregate, therefore, a service which had previously been performed by one road switcher and several yard assignments was effectively reversed, being performed by three road switchers and a single yard assignment crew. The Union contends that this change constituted a material change within the terms of Article 79 in respect of which it did not receive notice and had no opportunity to negotiate with the Company.

The provisions of that Article are as follows:

79.1 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 the employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with this paragraph.

(a) the Company will negotiate with the Union measures other than the benefits covered by paragraphs 79.2 and 79.3 to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in Agreement provisions considered necessary for the implementation of a material change is also subject to negotiation;

....

(k) When Material Change Does not Apply

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 reassignments of work or other normal changes inherent in the nature of the work in which employees are engaged;

(1) Disputes re: Application of this Article

A dispute concerning the applicability of this Article to a change in working conditions will be processed as a grievance by the General Chairman direct to the regional Vice-President, and must be presented within 60 days from the date of the cause of the grievance.

The Company submits that the change in the Sudbury switching yard was a result in the decline of business activity and fluctuations in traffic as contemplated in sub-paragraph (k). The Union does not dispute that position insofar as it relates to the period of the downturn. It maintains, however, that the Company's failure to return to the pre-existing method of work distribution within the Sudbury Yard in the Spring of 1983 and thereafter does constitute a material change in working conditions which has adversely affected the employees concerned, some of whom have been displaced.

The issue is whether there has been a material change in working conditions. It appears to the Arbitrator undisputable that if the change effected in the Sudbury operations had been implemented overnight, without the causal intervention of the economic recession, the conclusion that a material change was implemented would be inescapable. It is difficult to see, however, how the conclusion is any different merely because the change in question was implemented over a span of time. Plainly the reduction in crews occasioned by the decline in business could not be, and was not, objected to on the basis of a material change, save for the elimination of the final remaining yard assignment. Fluctuations in the volume of certain products and commodities, particularly in the mining sector, are to be expected. In the Arbitrator's view the parties did not intend such a temporary condition to justify the imposition of wholesale change in disregard of the requirements of Article 79 once the economic status quo has resumed. The Company's Spokesperson questions the possibility of the application of the Article where market changes extend over a substantial number of years. However, that circumstance does not arise in the instant case. Here the low point of the downturn was experienced for a period of months, not years, extending between December of 1982 and March of 1983, when new assignments were added. Article 79.1 (k) of the Collective Agreement is intended to preserve to the Company its normal prerogatives to deal with the circumstances there described, including the ability to reduce its workforce and alter assignments to respond to a reduction in the volume of business. It does however, address the circumstance of a return to normal. In other words, it does not allow the Company to use a temporary condition to make changes that go beyond the circumstances of that condition, without notice to the Union, and normal access to the protections established under Article 79.

For these reasons the Arbitrator must find that the reorganization of the Sudbury Switching Yard operations commencing in the Spring of 1983, including a substantial shift from yard assignments to road assignments, constitutes a material change within the meaning of Article 79 of the Collective Agreement. The same cannot be said, however, of the Company's decision to continue skeleton operations in the depth of the recession by the abolition of the 0800-1600 yard assignment and the substitution of incidental coverage by road switcher 598. That adjustment was plainly occasioned by a decline in business, and could be resorted to by the Company, subject to the

payment of appropriate rates for any yard work performed, as confirmed in CROA 1590. Given the determination made in that Case, which requires the payment of yard rates to the road switcher assignments established in Sudbury, the Arbitrator deems it appropriate to declare that the Company has violated Article 79 and to remit this matter to the parties to determine the remedy appropriate. I retain jurisdiction in the event of any ultimate disagreement between them.

MICHEL G. PICHER,
ARBITRATOR.