

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1976

Heard at Montreal, Tuesday, 12 December 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal of the abolishment by the Company of the twenty-minute paid meal period.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company has unilaterally abolished the twenty-minute paid meal period, which in some cases has been a long-standing practice since 1975, for employees who have worked regularly assigned hours of 0800K to 1600K with a twenty-minute paid meal period in accordance with Article 2.1 of Agreement 10.1

The contention of the Organization is that the Company cannot impose a unilateral change to this effect without negotiating a mutual agreement with the Brotherhood in accordance with Article 2.1 and 2.10 of Agreement 10.1 and all other applicable rules. In addition, the Union contends that the Company is estopped from making the unilateral change.

The Company disagrees with the Brotherhood's contention.

The Union requests that the Company reinstate the twenty-minute paid lunch period for all affected employees and compensate all affected employees for all additional time worked at the overtime rate for each day subsequent to the Company's unilateral cancellation of the twenty-minute paid lunch period.

FOR THE BROTHERHOOD:

(SGD) G. SCHNEIDER
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. L. Brodie	- System Labour Relations Officer, Montreal
D. C. St. Cyr	- Manager, Labour Relations, Montreal
J. Luciani	- Counsel, Montreal
N. Dionne	- System Labour Relations Officer, Montreal

M. Benedetto - Coordinator, Engineering Special Projects,
Montreal
J. Little - Witness, Montreal

And on behalf of the Brotherhood:

M. Gottheil - Counsel, Ottawa
G. Schneider - System Federation General Chairman, Winnipeg
R. F. Liberty - Secretary/Treasurer & General Chairman,
Winnipeg
R. A. Bowdan - System Federation General Chairman, Ottawa

AWARD OF THE ARBITRATOR

On the basis of the material filed I am satisfied that at an "Article 3" negotiating session held on or about September 9, 1986 the Company's representative stated to the Brotherhood that the twenty-minute paid lunch period then in effect at the Transcona and Saskatoon Work Equipment Shops would be continued. This was said in response to a tabled demand by the Brotherhood for more specific language within the terms of the Collective Agreement concerning a paid twenty-minute lunch period for employees other than equipment maintenance employees, including section crews.

It does not appear disputed that the paid lunch period at Transcona and Saskatoon Work Equipment Shops originated in 1970 at the request of the employees and had continued without interruption. Partly in reliance on the Company's representation the Brotherhood withdrew its demand and entered into a collective agreement for the years 1987 and 1988. During the currency of that agreement the Company gave notice that the twenty-minute paid meal period was to be discontinued.

I am satisfied that the elements of estoppel are made out. The Company represented to the Brotherhood's bargaining committee that there was no need to insert specific language into the Collective Agreement with respect to the paid lunch period, and that the practice at Transcona and Saskatoon would not be changed. In my view it is immaterial whether that practice or its discontinuation would be pursuant to Article 2.1 or Article 2.10, an issue of dispute between the parties. The sworn testimony of the Brotherhood's witnesses discloses that the Company's spokesperson made a representation to the Brotherhood which caused it to withdraw its position in reliance, and to enter into a collective agreement which foreclosed its ability to bargain any more specific protections at least until the end of 1988. The estoppel is well established on these facts.

In my view, however, the estoppel cannot endure beyond the end of 1988. It is common ground that at the end of 1988 the contract was reopened. Being on notice of the Company's position with respect to the paid lunch period, the Brotherhood was again fully able to deal with that issue for the purposes of its 1989 Collective Agreement,

and thereafter. As of that time, absent any agreement to the contrary, the Company was entitled to enforce the provision found in Article 2.1 in respect of the day's work being eight consecutive hours, exclusive of a one-hour unpaid meal period.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that the Company was not entitled to abolish the twenty-minute paid lunch period without the consent of the Brotherhood prior to the expiry of the Collective Agreement on December 31, 1988. The Company is directed to make whole forthwith all employees who were affected by its abolishment of the twenty-minute paid lunch period from May 19, 1987 to the end of 1988.

December 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR