CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2024

Heard at Montreal, Thursday, 10 May 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

The expansion of the Direct Deposit Service method of distributing employees' wages to include all employees.

JOINT STATEMENT OF ISSUE:

By letter dated December 11, 1989, the Company advised the Union of its intention to discontinue the method of paying employees by cheque effective June 8, 1990, and expand Direct Deposit Service (DDS) to include all employees.

The Union contends that the expansion of DDS is a matter which must be negotiated between the parties. The Union further contends, in the absence of such negotiations, that the expansion of DDS is in the nature of a Material Change in Working Conditions requiring the issuance of a Notice pursuant to Article 79 of Agreement 4.16.

The Company disagrees.

FOR THE UNION:	FOR THE COMPANY:
(SGD) T. G. HODGES	(SGD) D. C. FRALEIGH
GENERAL CHAIRPERSON	ASSISTANT VICE-PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company:

P. D. Morrisey - Manager, Labour Relations, Montreal
J. B. Bart - Manager, Labour Relations, Montreal
L. A. Harms - System Labour Relations Officer, Montreal
M. S. Fisher - Co-Ordinator, Transportation, Montreal

And on behalf of the Union:

T. G. Hodges - General Chairperson, St. Catharines
L. H. Olson - National Vice-President, Edmonton
B. Leclerc - General Chairperson, Quebec
C. S. Lewis - Secretary/Treasurer, Vancouver
P. Lawrence - Local Chairperson, Vancouver
F. Garand - Vice-General Chairperson, Montreal

AWARD OF THE ARBITRATOR

The joint statement of issue discloses a two-fold objection on the part of the Union. The first is that the Company is under an obligation to negotiate with the Union the implementation of a mandatory direct deposit service (DDS). The second, and alternative, position is that mandatory DDS constitutes a material change which gives rise to the application of the protections of Article 79 of the Collective Agreement. It is common ground that although the joint statement is drafted in relation to Collective Agreement 4.16, the issue before the Arbitrator also concerns similar issues in respect of Collective Agreements 4.13 and 4.2 and, it appears by agreement, to the agreement between VIA Rail Canada Inc. and the Union.

The issue of mandatory DDS was the subject of a recent arbitration award between the Company and the Sheet Metal Workers International Association dated May 7, 1990. That award recognizes that it is open to the parties to a collective agreement to include terms in respect of the method of payment of employees within their contract. Where they do not, however, absent cogent evidence to the contrary, it is generally deemed that the discretion of the employer in respect of the method of payment remains unrestricted. At p.6 of the Sheet Metal Workers award the following comments were made:

> It is well established that the method of payment can be made a term of a collective agreement, and this may be by either express or implied terms. Regard must be had to the language of the collective agreement and the facts of each case to determine whether the parties have agreed, directly or indirectly, to limit the Employer's discretion of the method of payment. (See Maritime Telegraph and Telephone Company Limited, (1986) 24 LAC (3d) 381 (MacLellan) and see also CROA 1810, an award concerning a grievance between the Company and the Canadian Brotherhood of Railway, Transport and General Workers.)

The general principle governing the method of payment for the purposes of a collective agreement, and the discretion of the employer to change it, was addressed in the following terms by the authors of Brown & Beatty, Canadian Labour Arbitration, at paragraph 8-1400:

> ... Arbitrators have generally acceded to the proposition that where the collective agreement is silent, management may alter the method of paying its employees so long as the alteration is done in good faith for valid business reasons, and does not deprive employees of any wages which they had earned under the agreement.

(See also CROA 1784, CROA 1810 and Re Victoria Hospital Corporation and London and District Service Workers Union, Local 220 (1982) 4

LAC (3d) 193 (Brent).)

In the instant case the Union can point to no provision within the Collective Agreement governing the method of payment of its members. In other words, the agreement is silent on the method of payment and, absent evidence to the contrary, the Arbitrator is compelled to conclude that, subject to good faith and valid business purposes, the employer retains the discretion to change payroll methods as it sees fit. There is not, in the instant case, collective agreement language such as was found in the Sheet Metal Workers case from which it could be implied that the parties contemplated the ongoing payment of employees by the delivery of a pay cheque, at or during their regular tour of duty. For these reasons I cannot accede to the first position of the Union that the Collective Agreement reflects any general obligation on the part of the Company to negotiate with the Union any change in the method by which employees are paid.

The second contention of the Union is that the alteration of pay methods is a material change within the meaning of Article 79 of the Collective Agreement. That article provides, if part, as follows:

> 79.1 The Company will not initiate any material change in working conditions which will have 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.

The meaning of material change has been considered in prior awards of this Office. In CROA 221 language substantially similar to the language of Article 79.1 in the instant case was considered by the Arbitrator where the Union alleged that the introduction of radios into yard service constituted a material change. In that award the Arbitrator commented as follows:

> In some respects, as the company points out, the introduction of radios may have beneficial effects, for example in making the work of yardmen easier in certain ways. At the same time, no doubt, as the union points out, they may be considered as having adverse effects, as being cumbersome, an added responsibility, requiring a new technique, and so on. These considerations are not, in my view, particularly helpful in resolving the question whether the change is a material one, or will have materially adverse effects on employees. The notion of a "material" change, or of "materially adverse" effects is question-begging, for the question which must first be resolved is: material to what? The answer to this question can only be determined upon a consideration of article 47 as a whole. What are its purposes, and what sort of matter does it contemplate as material to its operation? In the context of article 47, it must be said that a material change is one which leads to situations for which the procedures of that article

> are properly invoked. It is apparent at a glance that article 47 contemplates some substantial dislocation of employees with respect to their work, as to time, place or fundamental character.
>
> (emphasis added)

There are obviously many kinds of employee interests that can be affected by changes introduced by the Company. As indicated in CROA 221, however, not all changes which have some negative impact on employees are necessarily material changes in working conditions having materially adverse effects on employees within the meaning of Article 79.1 of the Collective Agreement. Many kinds of privileges and procedures, such as the allocation of parking spaces, lockers, work clothing and equipment, and indeed the physical location of a workplace or lunch room may form part of the daily working conditions of employees. Sometimes they can, upon the agreement of the parties, be elevated to the level of terms and conditions of employment which are included within the provisions of a collective agreement. The method by which employees are paid falls within this category of rights and privileges. Some collective agreements provide for it, others, like the agreemeent at hand, do not.

Generally speaking, such rights or priviliges may be described as secondary or peripheral. They are to be contrasted with conditions of employment such as seniority, bumping rights, lay off provisions and rights of recall, to name a few, which are provisions central to the operation of a collective agreement, and to the vital job interests of the employees governed by it. It is in that context that the meaning of the terms "material change in working conditions" and "material adverse effects" found in Article 79.1 must be construed.

On the whole I am not persuaded that the conversion to a mandatory direct deposit system by the Company can be characterized as a material change within the contemplation of Article 79.1. There can be little doubt that direct deposit would not be the choice of some employees. I cannot conclude on the language of the Collective Agreement, however, that the denial of their preference constitutes a material adverse effect caused by a material change in their working conditions in the sense intended by Article 79.1. For this reason I am unable to accept the position of the Union that the Company is under an obligation to issue a notice pursuant to Article 79 of the Collective Agreement in respect of the implementation of its mandatory direct deposit service.

Lastly the Union pleads estoppel. On the material before me there is no evidence of any undertaking or representation on the part of the Company that can be characterized as a promise to the Union that it would not implement a mandatory DDS payroll during the life of the Collective Agreement. Nor is there evidence of any detrimental reliance in that regard on the part of the Union. At the root of the doctrine of estoppel is the notion that there is a contractual term or obligation, the strict enforcement of which one party waives by means of an express or implicit representation made to the other. If the Collective Agreement at hand contained a provision allowing the Company to implement DDS, and it had followed a long-established

practice of not doing so, and during bargaining for the current Collective Agreement gave the Union to understand that it would not enforce its strict rights in that regard, estoppel might arguably apply. As noted above, however, the Collective Agreement is entirely silent on the issue of the method of payment. Absent any such provision, or evidence of any such representation or reliance, I am unable to support the assertion of estoppel in the circumstances of this grievance.

For the foregoing reasons the grievance must be dismissed.

May 11, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR