CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2026

Heard at Montreal, Tuesday, 12 June 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim for wages on behalf of Mechanics "A" and Mechanics "B" of the Work Equipment Shop, Transcona for all hours worked by the Automotive Services Department employees at the Symington Yard Shop performing work on hi-rail equipment, and all other persons outside the scope of Agreement 10.1 and agreements supplemental thereto, performing such work.

BROTHERHOOD'S STATEMENT OF ISSUE:

On March 19, 1987, the Brotherhood became aware that installation and major maintenance work on hi-rail equipment, including the bi-annual inspection of such equipment, would now be performed by the Company's Automotive Services Department at the Symington Yard Shop and requested that the work be returned to the Work Equipment Shop in Transcona.

The Brotherhood contends that this type of repair and maintenance work has traditionally and historically been performed by Maintenance of Way Employees governed by Supplemental Agreement 10.3. The Brotherhood further contends that the work in question has been arbitrarily transferred to the Automotive Services Department Shop in Symington Yard and is now being performed by employees in the Automotive Services Department and/or by contractors. The Union contends that the Company has violated Article 34.3 of Agreement 10.1 and all other applicable articles. The Union requests the Company return the work to employees covered by Agreement 10.1 and agreements supplemental thereto, and pay all affected employees for all hours worked by employees outside the Brotherhood's bargaining unit.

The Company disagrees with the Brotherhood's contentions and has denied its request.

FOR THE BROTHERHOOD:

(SGD) G. SCHNEIDER
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D.C. St-Cyr -- Manager, Labour Relations, Montreal
R. Lecavalier -- Counsel, Law Department, St. Lawrence Region, Montreal
R. Vandendorpe -- Superintendent Operations, Work Equipment, Winnipeg
A. Forget -- General Maintenance Officer, Automotive Services, Montreal
D. Brodie -- System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M. Gottheil -- Counsel, Toronto
G. Schneider -- System Federation General Chairman, Winnipeg
R. S. Dawson -- Federation General Chairman, Winnipeg
H. R. Westberg -- Witness

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes, beyond controversy, that the repair and maintenance of Hy-Rail equipment has not, on a national basis, been performed exclusively by bargaining unit employees. On the Eastern Lines of the Company the Automotive Services Department has performed such work, although it may also have been performed by Maintenance of Way employees. It does not appear disputed, however, that on the Company's Western Lines, and in particular in the Prairie Region encompassing Work Equipment shops in Winnipeg and Edmonton, such work was performed by members of the Brotherhood of Maintenance of Way Employees employed in the Work Equipment Department at those locations. In other words, viewed nationally, the practice is mixed: in the eastern regions of the Company's operations mechanics who are members of the Canadian Brotherhood of Railway, Transport and General Workers employed in the Automotive Services Department have routinely performed repair and maintenance service on Hy-Rail equipment, while in the western regions, and in particular the Prairie division, such work has been reserved to members of the Brotherhood of Maintenance of Way Employees.

The instant grievance is filed under Article 34.3 of the Collective Agreement which provides, in part, as follows:

> 34.3 Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, ...

The issue in the instant grievance is whether the Hy-Rail maintenance work at Transcona can be said to be ".. work which properly belongs to the maintenance of way department ...".

In the Arbitrator's view it is significant that the foregoing provision is contained within the terms of Collective Agreement 10.1,

which is national, and not merely regional, in scope. While the parties have negotiated separate agreements which govern such factors as job posting procedures in different regions, they have not made separate or distinct provisions in respect of rates of pay or job classifications as among employees in various locations in Canada who are in the Work Equipment Department. This, in my view, is consistent with an intention to establish a relatively consistent system of work assignments and job descriptions from region to region.

Article 34.3 of the Collective Agreement speaks in the broadest terms, in so far as it is situated in a provision of the Collective Agreement which is of general application across all regions of the Company's operations and speaks in terms of work belonging "to the maintenance of way department". The Brotherhood has not referred the Arbitrator to any case which directly supports its submission that work ownership is to be assessed on a regional or local basis for the purposes of the application of Article 34.3 of the Collective Agreement. Its Counsel cites CROA 1966, relating to a dispute involving CP Rail concerning snow removal in two Montreal yards. However, that decision concerns the application of a different kind of provision in respect of a prohibition against contracting out. It does not speak to an issue comparable to the application of Article 34.3 of the Collective Agreement.

Article 34.3 addresses a particular situation, namely the assignment of work to employees of the Company who are outside the maintenance of way service. It is well established in the prior decisions of this Office that where both Maintenance of Way employees and employees within another bargaining unit both perform a particular type of work assignment, work which falls under such a shared jurisdiction cannot be said to belong to Maintenance of Way Employees within the meaning of Article 34.3 of the Collective Agreement (see, e.g., CROA 1316). Moreover, there is no indication in the awards of which I am aware that the concept of work belonging to the Maintenance of Way Department is to be assessed on the basis of the practice in specific shops, yards or regions. The tenor of the Collective Agreement, as noted above, is to the contrary. Moreover, a number of prior awards dealing with Article 34.3, as well as its analogue within the Brotherhood's Collective Agreement with Canadian Pacific Ltd., appear to have been argued and decided on the basis of national practice, rather than regional distinctions (see, e.g., CROA 1655, 1803).

In summary, the maintenance of Hy-Rail equipment is performed within the territory covered by the bargaining unit by both Maintenance of Way mechanics and mechanics who are members of another bargaining unit. It cannot, therefore, be characterized as work which belongs to the Maintenance of Way Department within the meaning of Article 34.3 of Collective Agreement 10.1.

For the foregoing reasons the grievance is dismissed.

June 15, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR