CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2070

Heard at Montreal, Tuesday, 13 November 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim by the Brotherhood alleging a violation of Article 78 of Agreement 1.1 and several time claims associated therewith.

JOINT STATEMENT OF ISSUE:

On February 27, 1989 the Company changed the operation of Trains 340 and 341 at Stellarton.

Prior to the change, 3 locomotive engineers were operating this set of trains as follows:

one locomotive engineer was assigned in turn-around service Stellarton to Stellarton via Truro.

two locomotive engineers were assigned in straight-away service, Stellarton to Havre Boucher and Havre Boucher to Stellarton.

The Company abolished the assignments and created a new one;

two locomotive engineers were assigned to operate in straight-away service, Stellarton to Havre Boucher via Truro and Havre Boucher to Stellarton.

The Brotherhood contends the Company should have served a notice under Article 78.1 of Agreement 1.1 and negotiated the adverse effects as contemplated by Article 78.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) G. HALL	(SGD) M. DELGRECO
GENERAL CHAIRMAN	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	-- Manager, Labour Relations, Montreal
G. C. Blundell	-- Manager, Labour Relations, Moncton
B. O. Steeves	-- District Transportation Officer,

	Moncton
M. S. Fisher	-- Coordinator, Transportation , Montreal

And on behalf of the Brotherhood:

G. Hall,	-- General Chairman, Quebec
D. S. Kipp	-- General Chairman, Kamloops
J. D. Pickle	-- General Chairman, Sarnia
G. N. Wynne	-- General Chairman, CP Lines East, Smiths Falls -- Observer
T. G. Hucker	-- General Chairman, CP Lines West, Calgary -- Observer
J. P. Beauregard	-- Senior Vice-Chairman, CP Lines East, North Bay -- Observer
A. Bourgeois	-- Local Chairman, CP Lines East,Montreal -- Observer
S. O'Donnell	-- Vice-Local Chairman, ONR, North Bay -- Observer
M. Kenney	-- Local Chairman, ONR, North Bay -- Observer

AWARD OF THE ARBITRATOR

This grievance concerns the application of Article 78 of the Collective Agreement which provides, in part, as follows:

78.1 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 locomotive engineers, the Company will:

(a) negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay, and

(b) give at least six months advance notice to the Brotherhood of any such proposed change, with a full description thereof along with details as to the anticipated changes in working conditions.

...

78.6 The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 78 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which locomotive engineers are engaged.

It is undeniable that one of six locomotive engineers' positions at Stellarton was abolished as a result of the change implemented by

the Company. In the Arbitrator's view standing alone that would constitute a material change in working conditions with significant adverse affects of locomotive engineers within the contemplation of Article 78.1. In light of that conclusion, it is unnecessary to determine whether what has transpired is or is not a run-through within the meaning of the same article.

The issue of substance becomes the application of Article 78.6 in the circumstances of this case. While the Company argued that the exception contained within that article applies because the Company's actions were taken in response in decline in business activity, that argument appears less than persuasive. It is common ground that there had been no elimination of trains in either direction between Truro and Havre Boucher. It appears undisputable that initiatives taken by the Company in rearranging the assignments of locomotive engineers at Stellarton could have been implemented just as effectively if there had been no change in the volume of traffic, or indeed if there had been a slight increase. In the circumstances the Arbitrator can see no causal link proved between the Company's decision to eliminate a locomotive engineer's position and the decline in business which occurred at about the same time.

In the Arbitrator's view the more compelling argument is that what transpired was the result of "a reassignment of work at home stations or other normal changes inherent in the nature of the work in which locomotive engineers are engaged.", within the meaning of Article 78.6. As noted above, in the instant case there has been no discontinuance of any train, a fact which distinguishes the case at hand from those considered in CROA 289, 331 and 1023. The evidence discloses that what the Company did was to eliminate what had been a turnaround service run from Stellarton to Truro and return, and to establish a new assignment from Stellarton westward to Truro on Train 341 and then eastward from Truro to Havre Boucher on Train 340. It has, in effect, established two new assignments where three assignments had previously existed. There has been no cancellation of trains, and no change in home terminals as a result. While these changes have had effects on the employees concerned, particularly in relation to the length of the newly established assignment, that of itself does not bring the facts outside the exception provided for in Article 78.6.

On a review of the facts it is clear that the Company has found what it considers to be a more efficient means of assigning work to locomotive engineers at Stellarton, with a resulting change in the deployment of persons home stationed at that location. In the Arbitrator's view the Company's right to so reorganize the assignments is not circumscribed by any provision of the Collective Agreement, and the changes which have resulted constitute a reassignment of work at home stations contemplated as an exception within the terms of Article 78.6 of the Collective Agreement. A mere change in assignments does not of itself constitute material change for the purposes of Article 78.1.

For the foregoing reasons the grievance must be dismissed.

November 16, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR