CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2139

Heard at Montreal, Thursday, 11 April 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims associated with the extension of GO Train service to Whitby, Ontario.

JOINT STATEMENT OF ISSUE:

Prior to December 5, 1988, Government of Ontario GO Train commuter service east of Toronto terminated at Pickering, Ontario. On December 5, GO Train service was extended to Whitby.

The Union contends that the extension of service to Whitby constituted a material change in working conditions to which the provisions of Article 79 of Agreement 4.16 applied. Therefore, the Company could not institute the extension of service until the provisions of that article had been complied with.

The Union further contends that, because it had not agreed to the extension of service to Whitby, employees on GO Train assignments operating to Whitby are entitled to an additional day's pay for each tour of duty under the provisions of paragraph 9.5 of Article 9 of Agreement 4.16.

The Company contends that the change at issue is not a material change in working conditions and that the provisions of Article 79 did not apply to the extension of service. It further contends that the employees are not entitled to the additional day's pay as claimed.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) T. G. HODGES	(SGD.) M. DELGRECO
GENERAL CHAIRPERSON	for:ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

S. F. McConnville	Labour Relations Officer, Montreal
J. B. Bart	Manager, Labour Relations, Montreal
M. Hughes	Labour Relations Officer, Montreal
B. Laidlaw	Labour Relations Officer, Montreal
B. J. Mahoney	System Transportation Officer, Montreal
J. M. Kelly	Labour Relations Officer, Toronto

R. J. Beaul GO Systems Officer, Toronto

And on behalf of the Union:

T. G. Hodges General Chairperson, St. Catharines
G. E. Binsfeld Secretary/Treasurer, GCA, St. Catharines
W. J. Storring Local Chairman, Toronto
H. E. Tarr Vice-Local Chairman, Toronto

AWARD OF THE ARBITRATOR

It is common ground that the parties negotiated the terms of Addendum No. 50 to the Collective Agreement, dated December 19, 1980, to govern the particular terms and conditions relating to crews manning and operating Government of Ontario (GO) commuter trains operating into and out of Toronto. GO Train service originated in 1967, originally linking Oakville, Toronto and Pickering. The service expanded substantially over the years, both before and after the execution of Addendum No. 50. By December of 1988 the system had grown to operate some 133 trains daily over six separate rail commuter lines servicing communities outlying Metropolitan Toronto.

In the fall of 1988 a decision was made to expand GO service to Whitby, Ontario on an hourly basis. This involved extending the service an additional 7.9 miles from Pickering to Whitby. In the result all GO Transit assignments were abolished and on November 17, 1988 the Company readvertised the positions, to include assignments running through to Whitby. Five new Lakeshore Line assignments were established, three of which were home-terminalled at Whitby. In the result, crews which were previously home-terminalled at Mimico became home-terminalled at Whitby. Additionally, the expanded service involved an increase in the number of employees from twenty-one crews servicing the Lakeshore route to twenty-six crews with the expanded service.

The Union cites three factors which it submits constitute adverse effects flowing from the change in operations, which it characterizes as a material change within the terms of Article 79 of the Collective Agreement. That article provides, in part, 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. ...

(b) while not necessarily limited thereto, the measures to minimize adverse effects considered negotiable under sub-paragraph (a) of this paragraph may include the following:

(1) Appropriate timing
(2) Appropriate phasing
(3) Hours on duty
(4) Equalization of miles
(5) Work distribution
(6) Adequate accommodation
(7) Bulletining
(8) Seniority arrangements
(9) Learning the road
(10) Eating en route
(11) Working en route
(12) Layoff benefits
(13) Severance Pay
(14) Maintenance of basic rates
(15) Constructive miles
(16) Deadheading

The foregoing list is not intended to imply that any particular item will necessarily form part of any agreement negotiated in respect of a material change in working conditions.
...

(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.

Firstly, the Union submits that the establishment of a new home terminal for three crews at Whitby is a material change with an adverse effect on the employees involved. Secondly, it maintains that the increase in crews and the number of employees in the system has resulted in a net reduction in mileage opportunities available on average to the employees working assignments on the Lakeshore system. In this regard its representative advances figures to show that on a monthly basis some 312 miles of work opportunity have been lost per employee on the Georgetown and Lakeshore Lines. This, the Union argues, is due in part to the fact that crews are required to undergo a forty minute delay at Whitby to accommodate train scheduling. Lastly, the Union submits that the employees who work on weekends have been adversely affected, as evidenced by the fact that they are compelled to forego the lunch hour which they previously used to take, and to eat during the forty minute layover in Whitby, if they wish to maintain the same level of mileage earnings which they had prior to the introduction of the Whitby Service.

The Company argues that the actions which it took do not constitute a material change within the meaning of Article 79 of the Collective Agreement, and in particular are excluded by the operation of sub-paragraph (k) of that provision. Its representative submits that the extension of the GO Service to Whitby is not unlike an increase in traffic to service an industrial client, and argues that the adjustment in assignment and changes in the number of crews and employees are normal changes inherent in the nature of the work of running trades employees. Citing the fact that many of the GO Train

work assignments involve limited mileage and the payment of employees on the basis of the mileage guarantee, the Company's spokesperson suggests that the Union has failed to disclose any adverse affects of genuine substance in the circumstances of this case.

The Arbitrator has difficulty accepting the entirety of the submission of the Company in this case. For the reasons related in a number of prior awards of this Office I would be inclined to agree that the changing of the home terminal would not, in and of itself, constitute a material change within the meaning of Article 79 (see CROA 332 and 1444). However other considerations in this case lend support to the Union's position. As a general matter, I am inclined to reject the Company's suggestion that the extension of GO Service to a new terminal, with hourly commuter service, is comparable to providing additional service to a freight customer, and therefore falls within sub-paragraph (k) of Article 79.

As the awards of this Office have previously noted, the provisions of Article 79 themselves reflect the parties' understanding of what constitutes material changes in working conditions resulting in materially adverse effects on employees. In dealing with the impact of the introduction of ground-to-cab radios in yard service at Calgary, in a grievance concerning the Canadian Pacific Railway Company and this Union, construing the language of a similar provision in CROA 221 the Arbitrator made the following observations:

The use of the ground-to-cab radios would certainly affect the manner in which work is performed by yard crews. The change in method made possible by the use of radios will, it is contemplated, lead to changes in staffing of yard crews, at least in some instances. That is to say, there may be reductions in yard crews and employees displaced as a result of the introduction of ground-to-cab radios. The company does not contemplate any reduction of assignments: it is the staff of the crews performing the assignments which may be reduced. For example, an assignment now carried out by a crew of three may in future be carried out by a crew of two. The determination to reduce the size of the crew on any assignment is one which can be made only pursuant to article 9 of the yard rules, attached to the collective agreement. That article sets out the procedure to be followed in making the determination that a crew is reducible, and the rights of employees affected by such a determination. It was the position of the company that the question of reductions in yard crew, being dealt with in article 9 of the yard rules, was not one that could be dealt with under article 47. In this, the company relies on article 47(1)(1), referred to above, which is as follows:

(1) 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 reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged. While a reduction in the size of a yard crew may be made pursuant to article 9 of the yard rules, it is not the sort of "normal" change referred to in article 47(1)(1), and

> does not involve the sort of everyday application of the collective agreement there contemplated. Where a change in working conditions creates a situation in which it may be possible to reduce the size of a number of yard crews, it surely must be said that such a change is a ``material'' change within the meaning of article 47, in that it leads to adverse effects on employees of a sort which may be minimized by measures such as those set out in article 47(1)(c). For this reason it is my conclusion that the introduction of ground-to-cab radios is a material change in working conditions, and that it will have materially adverse effects on employees.

(See also CROA 1167.)

While the foregoing passage deals with a reduction in work opportunities by the reduction of crews, it is, in my view, no less pertinent to the objects of Article 79 to relieve against the loss of work opportunities when available miles are substantially reduced. It is, in my view, significant that the measures that are deemed negotiable within the terms of Article 79 include such factors as the equalization of miles, eating enroute, constructive miles and deadheading. While it may not necessarily be asserted that any measure which impacts any of these areas is, of necessity, a material change, the listing of these factors in Article 79 give some sense of the kinds of adverse impacts contemplated by that provision.

In the case at hand the material filed by the Union discloses, prima facie, that the establishment of the new terminal at Whitby, and the extension of GO Service to that point, has resulted in a reduction in the average monthly miles available to be worked by employees within the system. With the implementation of additional crews, the requirement of a forty minute delay at Whitby and a relatively small addition of miles to the system, the ratio of available miles to employees on a monthly basis has been reduced. It further appears that, as a practical matter, some employees have been compelled to forfeit their meal period to maintain the prior level of mileage worked on weekend runs.

Both parties acknowledge that it is difficult to know with any precision the precise impact of the Whitby change as it might apply on an employee-to-employee basis. That, it seems, is because of the complexity of the GO Train system work schedule and the many variables which can bear on employees' overall earnings. On the basis of the prima facie evidence before me, however, which I must conclude remains unrebutted by the Company, I am compelled to conclude that there appears to have been a reduction in mileage earnings opportunities for employees as a result of the changes implemented to the extension of service to Whitby. Whether those impacts are marginal or substantial in their practical application is not a matter to be determined at this stage of the dispute. Suffice it to say that the Union has demonstrated that the extension of service to Whitby did constitute a material change in working conditions as contemplated within the terms of Article 79 of the Collective Agreement, and that that provision was violated by the Company in that it failed to give notice of that change to the Union pursuant to the provisions of Article 79.

The Arbitrator cannot, however, accept the merits of the Union's position in respect of its claim for an additional day's pay for each tour of duty filed under the provisions of paragraph 9.5 of Article 9 of the Collective Agreement. The Arbitrator accepts the submission of the Company that Article 9.5 deals with the payment of employees for extra service between regular laid out day's trips, in the sense that they do work above and beyond that associated with their regular assignment. Quite apart from whether the Company properly complied with the terms of Article 79 of the Collective Agreement, the employees in question were remunerated in accordance with the performance of their regular assignment and were not required to perform extra service within the contemplation of Article 9.5. That part of the grievance must therefore be dismissed.

For the foregoing reason the grievance is allowed, in part. The Arbitrator finds and declares that the Company initiated a material change in working conditions having materially adverse effects on its employees within the meaning of Article 79.1 of the Collective Agreement by instituting the extension of service to Whitby, in conjunction with an increase in the number of crews. The Company is therefore directed to comply with the provisions of Article 79.1 in respect of this matter, and to undertake negotiations with the Union as contemplated within Article 79.1. For the purposes of clarity, nothing in this award should be taken as conclusive of the merits of the Union's claim with respect to the degree of adverse effect on any particular employee or group of employees, as that is a matter which will only be determined upon closer examination by the parties.

April 12, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR