CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2149

Heard at Montreal, Thursday, 16 May 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The inputting of information into the EPPS (Employee Performance Profile System) computer system on the Atlantic Region.

JOINT STATEMENT OF ISSUE:

As a result of the Foisy Commission's investigation into the Hinton train accident, the Company instituted a formal reporting system, EPPS, to enable Company supervisors to keep adequate records of employees' performances.

The Brotherhood has contended that Article 28.9(7) of Collective Agreement 5.1 has been violated in that this work was previously performed by employees represented by the Brotherhood and that these employees have been adversely affected as a result of the implementation of the EPPS computer system.

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. McGRATH	(SGD.) W. W. WILSON
NATIONAL VICE-PRESIDENT	for:ASSISTANT VICE-PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company:

D. McMeekin	-- System Labour Relations Officer, Montreal
W. W. Wilson	-- Director, Labour Relations, Montreal
L. A. Harms	-- System Labour Relations Officer, Montreal
J. Barter	-- Acting Superintendent, Moncton
K. DeJean	-- Manager, Train Service, Moncton

And on behalf of the Brotherhood:

G. T. Murray	-- Regional Vice-President, Moncton
T. A. Barrons	-- Representative, Moncton
F. A. Warron	-- Local Chairperson, Moncton

AWARD OF THE ARBITRATOR

The Arbitrator accepts the submission of the Company that the issue to be resolved must be confined to that described in the Joint Statement of Issue. The material reveals that supervisors have been assigned to both retrieve and input data in a computerized reporting system, EPPS, intended to enable the employer to maintain more adequate records of employees' performances. That work, which was not performed previously by any bargaining unit employee, is said, without substantial contradiction, to involve an average of fifteen to thirty minutes of a supervisor's working day.

The Brotherhood relies on the provisions of Article 28.9(7) of the collective agreement which are as follows:

28.9 The following types of work shall be performed by employees governed by this agreement. . . .

(7) Transcribing inspection records and technical data into records and files; The thrust of the Brotherhood's position is that these supervisors are performing bargaining unit work in contravention of the foregoing provision.

In the Arbitrator's view the instant case falls within the principles described in CROA 2006 where the following observations were made:

An extensive line of decisions issuing from this Office has confirmed that Collective Agreement 5.1 does not confer a proprietary right to bargaining unit work to the Brotherhood. The awards have acknowledged that in some circumstances the creation of a job or assignment which involves essentially performing little more than the duties of a position falling entirely within the bargaining unit could result in a finding that the person performing the work must be treated as performing work within the bargaining unit. That, however, is not tantamount to saying that the Company is prohibited from assigning tasks which are sometimes performed by employees in the bargaining unit to non-bargaining unit employees. As Arbitrator Weatherill observed in CROA 527:

I was not referred to any provision in the collective agreement (and there appears to be none) which would require the Company to continue to assign particular work to employees in the bargaining unit, or which would prevent it from ``contracting out'' certain work, or from assigning it to employees in another area, or in another bargaining unit, or to employees not coming from any bargaining unit.

(See also CROA 117, 118, 246, 322, 381, 693, and 1160)

Given the above noted jurisprudence, the Brotherhood cannot assert that the work in question in the instant case belongs to bargaining unit members, and cannot be assigned to other employees. . .

For the foregoing reasons I am satisfied that the EPPS work which

has been assigned to Company supervisors is not work belonging exclusively to the bargaining unit. On that basis this grievance cannot succeed. For the purposes of clarity, however, it should be stressed that nothing in this award should be taken as foreclosing such rights as the Brotherhood may have in cases where it might be able to establish that the principal or core functions of a supervisory position have come to incorporate duties which fall entirely within the bargaining unit as contemplated in Article 28.9(7) of the collective agreement. In that circumstance, depending upon the fact of the case, a very different result might obtain. For the foregoing reasons the grievance must be dismissed.

May 17, 1991 (Sgd.) MICHEL G. PICHER
ARBITRATOR