CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2242
Heard at Montreal, Thursday, 12 March 1992
concerning
CANADIAN PACIFIC LIMITED
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DISPUTE:
The lay off of employees at the Transcona Rail Butt Welding Plant on May 24, 1991.
JOINT STATEMENT OF ISSUE:
On January 3, 1991, 18 employees at the Transcona Rail Welding Plant were laid off, in accordance with the Semi-Annual Report for the first half of 1991. Of these 18 employees, four were recalled on January 28, 1991. On March 18, 1991, the 14 additional employees were recalled, 10 of whom were subsequently laid off, effective May 24, 1991.
The Union contends that: 1. The Semi-annual Report for the first half of 1991 did not indicate a second lay-off of employees on May 24. 2. The Company violated Sections 40.1, 40.2, 40.4 and 40.5 of Wage Agreement No. 41, and could not lay off any of the employees at the plant a second time after having been recalled to service from the initial lay off, since this second lay off was not part of the planned changes involving the displacement or lay off of employees.
The Union requests that: 1. All employees laid off as a result of the second plant lay off be compensated for all lost wages, benefits and expenses incurred and that they be recalled to their former positions forthwith. 2. Any other employee affected by this second lay off, due to them having been displaced, laid off or having to exercise their seniority to another position, be compensated for all lost wages, benefits and expenses they incurred and that they also be returned to their former positions immediately.
The Company denies the Union's contentions and declines the Union's requests.
FOR THE BROTHERHOOD:
FOR THE COMPANY:
(SGD.) L. M. DiMASSIMO
(SGD.) E. J. REWUCKI
SYSTEM FEDERATION GENERAL CHAIRMAN
CHIEF ENGINEER
There appeared on behalf of the Company:
D. Cooke
Labour Relations Officer, Montreal
J. M. Lemire
Deputy Engineer of Track, Montreal
D. E. Guerin
Labour Relations Assistant, Montreal
And on behalf of the Brotherhood:
J. J. Kruk
System Federation General Chairman, Ottawa
K. Deptuk
General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The Arbitrator appreciates the importance of the Semi-Annual Report, and the overall value of the provisions of section 40 of the collective agreement to the Brotherhood. Those provisions clearly establish a degree of planning disclosure and input which was not previously available to the Brotherhood, the purpose of which, in part, is to allow it to propose to the Company possible means to avoid or minimize the adverse effects of planned work reductions. Article 40.4 mandates compliance with the requirement of the Semi-Annual Plan as a pre-condition to the layoff and displacement of any employee. It provides as follows:

40.4

No employee may be laid off or displaced as a result of a planned change of the nature contemplated in 40.2 unless and until the employer has substantially complied with the above provisions and a planned change has been included in a report.

For the purposes of the instant grievance article 40.2 is of importance. It provides as follows with respect to the content of the Semi-Annual Report:

40.2

The report will identify which changes will be of a technological, operational or organizational nature and which changes are expected to be made because of a permanent decrease in traffic, a normal reassignment of duties arising out of the nature of the work, or normal seasonal staff adjustments. Additionally, the report shall state the number of employees who are likely to be affected, their geographical location, when the changes will occur and the plans to preserve their employment including training or displacement into vacant permanent positions.

The facts disclose that, in accordance with the Semi-Annual Plan for the first six months of 1991, eighteen employees at the Transcona Rail Welding Plant were laid off as of January 3, 1991. Four of the employees were recalled for plant overhaul work on January 28, and the remaining fourteen were recalled on March 18, 1991. It is common ground that the second recall of the employees was prompted by the decision of the Company to perform certain welding operations on rail from its newly acquired Delaware and Hudson Railway, in the United States. The fourteen employees recalled starting March 18, 1991 were brought back to accelerate the Company's Canadian roads' welding requirements to make way for the Delaware and Hudson rail welding work which was scheduled for mid-May. It was soon discovered, however, when the American rail began arriving at Transcona in early May, that much of it was of a quality that would not meet the Company's standards. In the result, because of this unforeseen development, the quantity of rail available for the Delaware and Hudson project was substantially reduced in volume, thereby requiring the Company to reduce the Transcona operation to one shift, effective May 24, 1991.

The issue then becomes whether what transpired falls within the categories of change provided for in article 40.2 of the collective agreement. That is so because of the operation of article 40.5, which provides, in part, as follows:

40.5
If, during any six month period between report publishing dates, the Company plans to initiate a change of the nature contemplated in paragraph 40.2 above, which will have adverse effects on any employee, and that was not included in the current report, the appropriate General Chairman will be contacted and the change will be made if mutually agreed upon. If mutual agreement is not reached, the Company may place the issue at any time before the arbitrator at the Canadian Railway Office of Arbitration who shall be authorized to abridge the time limit feature and/or permit a special report to be delivered to the General Chairman, in the event of an emergency.
The material establishes, beyond controversy, that the slow-down in the Delaware and Hudson project was not expected or planned and was, therefore, not included as part of the Company's Semi-Annual Report for the first half of 1991. The Brotherhood maintains that the Company was, nevertheless, under an obligation to contact the local general chairman to discuss the possibility of mutually agreeing upon the change, failing which the matter should have proceeded to arbitration, pursuant to article 40.4. In the Arbitrator's view, however, that position can obtain only if the change which occasioned the layoff of May 24, 1991 can be said to fall within one of the four categories of change provided for in article 40.2 of the collective agreement.
It is common ground that what transpired was not a technological, operational or organizational change, that it was not a change due to a permanent decrease in traffic, nor was it the result of normal seasonal staff adjustments. The issue remaining, therefore, is whether the shortage of material for the Delaware and Hudson project and the resulting layoff, can be characterized as ``a normal reassignment of duties arising out of the nature of the work''.
In the Arbitrator's view, given the importance of section 40 of the collective agreement, care should be taken to avoid overly general statements as to the application of its terms. Its meaning and application is best left to develop on a case by case basis. In the instant case, however, the parties do not appear to be at odds that an event such as unforeseen major equipment failure, or the destruction of the plant by fire, resulting in the layoff of employees at Transcona, could not be said to be normal reassignment of duties arising out of the nature of the work as contemplated under article 40.2, nor would it fall under any of the other categories of change contemplated therein. The Arbitrator has difficultly distinguishing the application of the concept of the normal reassignment of duties, as it relates to the circumstances at hand, from such a general unforeseen emergency. For the reasons related above, the Company ascertained in May that the raw material which it would require for the Delaware and Hudson project was, for reasons beyond its control, not available to it in the quantities first anticipated.

In my view care must be taken in applying the words of article 40.2 to a fixed plant operation such as the Transcona Rail Welding Plant. The concept of a normal reassignment of duties arising out of the nature of the work applies, as the parties appear to agree, quite readily to the transient nature of work in on-site track maintenance, repair or construction of road bed, bridges and buildings. In that context, as projects are completed, as flows naturally from the nature of the work, employees are subject to a reassignment of duties. That may also be said to occur within a plant such as Transcona when, predictably, a scheduled project is completed, resulting in the reassignment or dislocation of some employees. Where, however, a project such as the one which is the subject of this grievance is unforeseeably curtailed for reasons beyond the Company's control, it is less evident that what has transpired can be characterized as ``a normal reassignment of duties arising out of the nature of the work'' as that concept must be intended to apply under the provisions of article 40.2 of the collective agreement. An unexpected ``breakdown'' in the quality or availability of the raw material is not, in the end, substantially different from an unexpected breakdown in plant equipment. In that circumstance the concept of the Company planning to initiate a change of the nature contemplated in article 40.2, as expressed in article 40.5, cannot fairly be said to arise.

For the foregoing reasons the Arbitrator is satisfied that the decision of the Company to lay off employees effective May 24, 1991 was not a planned change within any of the enumerated categories of change found within article 40.2 of the collective agreement. On that basis, no violation of article 40.5 is disclosed.

In fairness to the fullness of the positions argued by the parties, it should be noted that the Arbitrator has greater difficulty with the alternative theory of the application of section 40 advanced by the Company. It argues, in essence, that since the employees impacted by the layoff of May 24, 1991 were, in accordance with the Semi-Annual Plan for the first half of 1991, in any event scheduled to be on layoff, no violation of the provisions is disclosed. Bearing in mind that the provisions of section 40 are plainly intended to afford a measure of protection for all employees who are at work, and that from the standpoint of an employee the impact of any layoff is no less real, regardless of its timing, that argument is somewhat less than compelling on its face. In light of the conclusions reached above, however, it is not necessary for the Arbitrator to further resolve that issue for the purposes of this grievance.

For the foregoing reasons the grievance must be dismissed.

March 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR