CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2277
Heard at Montreal, Tuesday, 8 September 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE
DISPUTE:
Claim on behalf of laid-off Agreement 10.8 BMWE employees for work performed by Shopcraft employees at the Gordon Yard in Moncton, N.B.
BROTHERHOOD'S STATEMENT OF ISSUE:
On or about April 16, 1990, Employment Security employees who are members of the Shopcraft Unions participated in brush cutting, the stacking of track material, assorted cleaning duties and other tasks around the Gordon Yard. During this period there were laid-off BMWE employees available to perform the work.
The Union contends that: 1) This work has traditionally and historically been performed by employees who work under Agreement 10.8. 2) In assigning this work to Shopcraft employees the Company violated Article 34 of Agreement 10.1, Article 3 and 4 of Agreement 10.8, Article 4 of the ESIMP, and any other applicable provision of the collective agreement.
The Union requests that: The Company fully compensate all affected laid-off 10.8 employees for lost wages resulting from the assignment of this work to Shopcraft workers.
The Company denies the Union's contentions and declines the Union's request.
FOR THE BROTHERHOOD:
(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN
There appeared on behalf of the Company:
D. C. Gignac
System Labour Relations Officer, Montreal
D. C. St-Cyr
Manager, Labour Relations Officer, Montreal
J. R. Ivany
Project Coordinator, Operations, Moncton
J. Little
Coordinator, Special Projects, Engineer, Montreal
And on behalf of the Brotherhood:
D. W. Brown
Senior Counsel, Ottawa
R. A. Bowden
System Federation General Chairman, Ottawa
P. Davidson
Counsel, Ottawa

AWARD OF THE ARBITRATOR

It is not disputed that certain tasks related to assorted cleaning duties around the Gordon Yard were performed by employees from another bargaining unit, as alleged by the Brotherhood. The Company maintains, however, that brush cutting and the stacking of track material did not take place, stating that it has no information to that effect. It did not, however, call any evidence to dispute the allegation of the Brotherhood that brush cutting and the stacking of track materials was performed.

In support of its position the Brotherhood points to the letter of Local Chairman A.J. Cormier, dated May 6, 1990, addressed to Mr. J.J. Hachey, Track Supervisor at Moncton, N.B. In the body of that letter, tabled as evidence before the Arbitrator, Mr. Cormier states that employees from other bargaining units were engaged in ``... cutting of brush along the rights of ways and in the yards. They were also arranging and stacking track material at the Gordon Yard.'' In the final analysis, those written declarations represent the only evidence on this issue before the Arbitrator. They stand unrebutted by any contrary declaration on the part of any Company officer or witness produced at the hearing. In this regard it may be noted that at least one local management officer was in attendance. In the result, the Arbitrator is inclined to accept the submission of the Brotherhood with the respect to the issue of fact, and to find on the balance of probabilities that the cutting of brush and the stacking of track materials did occur.

The application of article 34 of collective agreement 10.1 to circumstances similar to those of this case was fully discussed in CROA 2276. For the reasons there elaborated, I am satisfied that the cutting of brush and stacking of track material, which is work of the bargaining unit, by employees from another bargaining unit in and around the Gordon Yard in April of 1990 was in violation of that provision. I cannot draw the same conclusion, however, with respect to the general cleaning duties and incidental tasks assigned to the employees. It is not substantially disputed that general clean up work has, in the past, been performed by members of other bargaining units, including members of the CBRT&GW, as well as shopcraft employees from the ranks of apprentices and helpers. In the circumstances, I cannot find that the general cleaning duties performed, with the exception of brush cutting and the stacking of track material, were work belonging to the Maintenance of Way Department within the contemplation of article 34.3 of collective agreement 10.1.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that the Company violated article 34.3 of collective agreement 10.1, as well as the bulletining requirements of article 3 of supplemental agreement 10.8. In the absence of any evidence with respect to the availability of laid off employees who fall under the terms of supplemental agreement 10.8, the Arbitrator makes no determination, at this time, with respect to the alleged violation of article 4 of that collective agreement. As in CROA 2276, I retain jurisdiction for the purposes of any further remedial order which may be appropriate, should that prove necessary.

September 11, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR