

- 3 -

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2430

Heard at Montreal, Wednesday, 15 December 1993  
concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Filling of newly-created positions to be established in the Moncton Crew Management Centre.

JOINT STATEMENT OF ISSUE:

On July 20, 1993, the Company served a "General" Article 8 notice to inform the Brotherhood of the impending closure of the Montreal and Toronto Crew Management Centres, which would result in the abolishment of forty-nine (49) permanent positions in Montreal and eighty-five (85) in Toronto. Concurrently, some eighty (80) new positions would be reestablished in the Moncton Crew Management Centre.

In August, Company and Brotherhood representatives met in Moncton pursuant to the provisions of Article 8.4 of the Employment Security and Income Maintenance Agreement for the purpose of negotiating means to further minimize adverse effects on the affected employees. Discussions between the parties broke down over the issue of how the new positions in Moncton should be filled.

It was the Brotherhood's position that the new positions in Moncton should first be offered to qualified employees working in the Montreal or Toronto Crew Management Centres and secondly to unqualified employees working on the St. Lawrence and Great Lakes Regions, before the new positions were offered to employees in Moncton.

The Company disagreed with the Brotherhood's position and the parties were unable to reconcile their difference.

The dispute is now properly before the Arbitrator under Articles 8.6 and 2.10 of the Employment Security and Income Maintenance Agreement.

FOR THE BROTHERHOOD:                      FOR THE COMPANY:

(SGD.) T. N. STOL                              (SGD.) M. M. BOYLE

NATIONAL VICE-PRESIDENT      for: ASSISTANT VICE-PRESIDENT, LABOUR  
RELATIONS

There appeared on behalf of the Company:

R. Paquette                      - Manager, Labour Relations, Montreal  
W. Agnew                        - Manager, Labour Relations, Moncton  
M. Fisher                        - Director, Crew Management, Eastern Canada

And on behalf of the Brotherhood:

R. J. Stevens                      - Regional Vice-President, Toronto  
R. Beckworth                      - National Vice-President, Ottawa  
G. T. Murray                      - Regional Vice-President, Moncton  
R. Johnson                        - Representative, Montreal  
T. Barron                         - Representative, Moncton  
F. Warren                         - Local Chairman, Moncton

#### AWARD OF THE ARBITRATOR

This matter is in the nature of an interest dispute brought under the provisions of article 8.6 of the Employment Security and Income Maintenance Agreement. The sole issue is whether employees who are adversely affected by the abolition of positions at the Montreal and Toronto Crew Management Centres, but who are not themselves qualified for CMC positions, should be given priority access to newly established positions in the Moncton Crew Management Centre. The Brotherhood submits that they should, while the Company maintains that, as between unqualified employees, preference should be given employees presently in the Atlantic Region, from within the bargaining unit and from other bargaining units, numbers of whom are presently on employment security at a substantial cost to the Company.

The Arbitrator appreciates the concerns which motivate the position of the Brotherhood. At least one prior agreement, involving the move of the Capital Labour and Materials Section of the Accounting Department into Moncton, was negotiated to include a provision similar to that being sought by the Brotherhood in the case at hand, to protect non-qualified employees at the affected location or on the affected region, provided they have the suitability and adaptability for the position, subject to training. The Brotherhood's concern is compounded by the fact that, at least at one point during the negotiations, the Company tabled a proposal for discussion which is the same as that now advanced by the Brotherhood, although that proposal was subsequently rejected by the Company itself.

However, there are equally compelling considerations motivating the Company's position. It is common ground that the Company faces economic constraints, which in all likelihood will result in still more job abolishments in the months and years to come. The employer has grave concerns with the prospect of being contractually obligated to transfer unqualified employees who may have very little seniority or service, for training in newly opened positions in another region where it already has a substantial burden in the payment of wages to employees who are on employment security status and who make marginal, if any, contributions to ongoing productivity. The Company's spokesperson relates that, in fact, the decision to relocate the crewing functions previously performed in Toronto and Montreal was motivated, in substantial part, by the availability in Moncton of a substantial number of employees on employment security status. Given its precarious financial position, and the need to realize economies, the Company argues that the position advanced by the Brotherhood would effectively undermine much of the rationale for the proposed move.

This is clearly a case of tragic choices. On the one hand, junior employees, who are unqualified for CMC work but are displaced by the job abolishments in the CMC offices in both Montreal and Toronto, will suffer in their work prospects if they are foreclosed from preferred access to newly established positions in Moncton. On the other hand, should the Brotherhood's position prevail, employees from this bargaining unit and others in Atlantic Canada, who have the full wage and benefits protection of employment security, will remain inactive insofar as work in the new CMC positions may be concerned, to the extent that those positions are taken by unqualified junior employees

from the locations or regions of the abolishments. That would plainly impose a substantial additional cost and inefficiency upon the Company.

In the Arbitrator's view it is important to have recourse to first principles in resolving so difficult a conflict. The Employment Security and Income Maintenance Agreement itself recognizes the importance of the protection of employment security, which attaches to persons who have completed eight years of cumulative compensated service with the Company. The rights accorded to such individuals under articles 7 and 8 of the Employment Security and Income Maintenance Agreement are a recognition of that fact. Commensurate with the extraordinary protection of employment security accorded to senior employees under the agreement, however, is the obligation of employees with such benefits and protections to make themselves available to protect the highest rated available work which their qualifications and seniority will allow. In other words, the spirit of the agreement under which this Arbitration Board is constituted reflects an understanding among the signatories to the agreement that, on the one hand, employees with a substantial degree of service to the Company will receive full protection against lay off while, on the other hand, the Company can expect a corresponding duty on the part of such protected persons to involve themselves in active service at the first opportunity.

When regard is had to the foregoing principles, the position advanced by the Brotherhood in the case at hand, while obviously motivated in good faith to protect the unqualified junior employees who may be impacted by the job abolishments in Ontario and Quebec, would substantially frustrate the purpose of the Employment Security and Income Maintenance Agreement, as it was originally intended to relate to employees in Atlantic Canada who have employment security status under the agreement. For these reasons the Arbitrator is compelled to prefer the position advanced by the Company as more consistent with the fundamental intention of the Employment Security and Income Maintenance Agreement, as originally conceived.

The Arbitrator therefore awards that the filling of newly established positions in the Moncton Crew Management Centre be in the following sequence of priority:

- 1.to the senior qualified employees working in the Crew Management Centre at the affected location;
- 2.to the senior qualified employees on the Atlantic Region;
- 3.to the senior non-qualified employees on the Atlantic Region;
- 4.to all other employees on the Atlantic Region;
- 5.to all other CN employees on the affected Regions.

17 December 1993

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MICHEL G. PICHER  
ARBITRATOR

