Canadian Railway Office of Arbitration

Case No. 2589

Heard in Montreal, Thursday, 16 February 1995

concerning

Canadian National Railway Company

and

National Automobile, Aerospace and Agricultural Implement Workers Union of Canada [CAW-CANADA]

ex parte

Dispute:

Abolishment of Claims Inspector positions and establishment of non-scheduled positions of Prevention Assistant at Winnipeg, Calgary and Vancouver

Ex Parte Statement of Issue

Some time in November 1991, the Company abolished three positions of Claims Inspector at Winnipeg. Coincident with that, the Company established non-scheduled positions of "Prevention Assistant" at Winnipeg, Calgary and Vancouver.

It is the Union's position that the duties and responsibilities of the non-scheduled Prevention Assistant position vary little from the work previously performed by the Claims Inspectors. The Union claims this work should properly be performed by members of the bargaining unit and is contrary to the provisions of articles 2.1, 12.1, 28.9, 29 and appendix II of agreement 5.1.

The Union also alleges that this change was of an operational or organizational nature, that the Company has failed to live up to the spirit and intent of the Larson Award, and is in violation of Appendix VIII of Agreement 5.1. The Union further contends that the Company failed to provide the benefits of the ESIMP Agreement.

The Union also argues that the Company violated article 11.9 of the Agreement when they allowed M. S. Babiuk to displace within the bargaining unit.

The Company denies any violation of the collective agreement or the ESIMP.

for the Union:

(sgd.) D. Olshewski

for: National Vice-President, CBRT&GW

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal

R. Faucher – Labour Relations Officer, Montreal

O. Lavoie – System Labour Relations Officer, Montreal

N. Paine – Director, Prevention & Claims Services, Montreal

R. Gauvin – Manager, Prevention & Claims Services, Edmonton

And on behalf of the Union:

D. Olshewski– Regional Co-Ordinator, Winnipeg

R. Storness Bliss– Regional Co-Ordinator, Vancouver

A. S. Wepruk– National Co-Ordinator, Montreal

A. Gibson – Witness

award of the Arbitrator

At the hearing the Union withdrew its allegation in respect of a failure on the part of the Employer to provide a notice under article 8 of the ESIMP agreement. The principle thrust of the Union's position is that the Company effectively abolished the

bargaining unit position of Claims Inspector, and has redistributed the work in question to persons occupying mid-management positions, principally under the tittle Prevention Assistant. Central to the Union's case is its assertion that the 'D' inspections conducted by prevention assistants are indistinguishable from the 'A' and 'B' inspections previously performed by claims inspectors.

As CROA 2169 reflects, it is not open to the Company to redesignate a bargaining unit job as a management, where there is no real distinction in the duties and responsibilities being performed. A close examination of the evidence does not, however, sustain the Union's position in the instant case. While it is true that both inspections involve generally the same type of work, to the extent that persons in either position attend at a customer's premises and examine damaged cargo, there is a substantial difference in the purpose and focus of the inspections being performed. The evidence confirms that the inspections performed by claims inspectors were done for the purpose of assessing the Company's liability in respect of damage to shipped goods, generally in amounts of limited monetary value, although occasionally they might involve more costly claims.

The inspections performed by prevention assistants have a very different purpose. The 'D' inspection is not conducted with a view to evaluating a customer's claim. Rather, the prevention assistant performing a 'D' inspection at a destination examines the shipment with a view to a preparing report which will assist in instructing the shipper of origin in how to better configure loads for future shipment, with a view to reducing future damage. Claim assessment is not part of the exercise, to the extent that the customers in question are subject to a limited liability agreement, with a fixed deductible amount, subject only to limited and clearly specified exceptions.

In the result, the Arbitrator cannot accept the assertion of the Union to the effect that the work of both positions is the same, or that the prevention assistant position essentially involves little other than work which previously belonged to the bargaining unit. The evidence establishes that claims inspectors were not primarily charged with the responsibility of preparing reports with a view to advising the shipper at the location of origin as to improved methods to avoid damage in the future. While there may have been a certain degree of incidental communication of that kind to a customer of destination, preventative reporting for shippers cannot be said to have formed part of the core functions of the claims inspector's job. It is a function which has traditionally been performed by management staff who have always performed 'D' inspections, and who have generally remained responsible for processing claims in excess of a limited monetary amount. Moreover, even if, as the Union argues, preparing 'A' and 'B' inspection reports and 'D' inspection reports is indistinguishable, the evidence would only confirm that the work in question has not been exclusive to the bargaining unit, but has been of shared jurisdiction.

Nor can the Arbitrator agree that the Company violated the intent of the Larson award in respect of its obligation to specify contemplated changes and periodic planning reports. As the Company's representative submits, the Union has not established that the implementation of the prevention assistant's

position, or the reduction of the claims inspectors' jobs, resulted in displacement, lay off or permanent decrease in the work force as contemplated within Appendix VIII of the collective agreement. In the result, I cannot find that there was any obligation on the part of the Company to provide a report in relation to the implementation of the prevention assistants' positions, or the elimination of claims inspectors positions. It does not appear disputed that no one was laid off or displaced as a result of the Company's actions, and that indeed some claims inspectors were promoted into management positions as prevention assistants.

Finally, the Arbitrator cannot sustain the submission of the Union to the effect that the Company violated article 11.9 of the collective agreement by allowing Ms. S. Babiuk to displace within the bargaining unit. It is common ground that her non-scheduled position was abolished in November of 1991. As an individual holding seniority in the bargaining unit, she elected to exercise her seniority to the position of Chief Claims Clerk, a position she apparently held until her resignation on April 30, 1993.

The thrust of the Union's position is that Ms. Babiuk must be taken to have left her non-scheduled position and returned to the bargaining unit at her own request, rather than being compelled to do so as contemplated in article 11.9 of the collective agreement. That provision reads as follows:

11.9 When employees, who have not forfeited their seniority under the above provisions, are released from such excepted employment, except at their own request or as provided in paragraph 12.19, such employees may exercise their seniority rights to any position in their seniority group which they are qualified to fill. They must make their choice of position, in writing, within ten calendar days from the date of release from excepted employment and commence work on such position within 30 calendar days from the date of release from excepted employment. Failing this, they shall forfeit their seniority and their names shall be removed from the seniority list.

As can be seen from the above, if in fact Ms. Babiuk voluntarily left her non-scheduled position, at her request there would be some merit to the Union's allegation. In fact, however, her position was abolished, and she was forced to find another position. While it is true that she did not wish to take a prevention assistant's position, because it might involve working midnights, and opted instead to return to a bargaining unit position, it cannot be said that she thereby left her non-scheduled job at her own request. She was clearly released from her excepted employment because her job was abolished in November of 1991. In the circumstances, no violation of article 11.9 is disclosed.

For all of the foregoing reasons the grievance must be dismissed.

17 February 1995 _____

MICHEL G. PICHER
ARBITRATOR