CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2711

Heard in Montreal, Wednesday, 13 March 1996

concerning

VIA RAIL CANADA INC.

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA [CAW-CANADA]

DISPUTE:

Alleged violation of articles 2.1 and 2.4 of collective agreement no. 1.

JOINT STATEMENT OF ISSUE:

It is the Brotherhood's contention that the above noted articles were violated when a carman was used to work as a material expeditor and operate the shop truck on July 14 and 15, 1993, at the Halifax Maintenance Centre. The Brotherhood contends that at least five (5) employees were available to do this work at the time, and that this work has traditionally been performed by members of the CBRT&GW bargaining unit, therefore, that this work should continue to be performed by them in the future.

The Corporation denied the grievance and maintains that there are no positions of "shop truck driver" or "material expeditor" at the Halifax Maintenance Centre. The Corporation also maintains that the duties involved in driving the truck are not exclusively work performed by CBRT&GW bargaining unit members, and that no employee suffered any loss of work as a result.

FOR THE UNION:	FOR THE CORPORATION:
(SGD.) T. N. STOL	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT, CBRT&GW	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock	– Senior Labour Relations Officer, Montreal
D. Douglas	– Manager, Servicing & Maintenance, Halifax

And on behalf of the Union:

A. S. Wepruk	– National Coordinator, Montreal
K. Adams	– Representative, Toronto

AWARD OF THE ARBITRATOR

The facts before the Arbitrator reveal that the practice of the Corporation has, for a number of years, been to assign the driving of the truck attached to the Corporation's shops in Halifax to employees from a number of bargaining units, as well as to supervisors. Moreover, it does not appear disputed that the actual driving of the truck constitutes a minor portion of any work day. By way of example, in July of 1993, on average the truck was utilized fifteen minutes per day. The following month, which was the heaviest month of logged use for the vehicle in that year, it was in use thirty-five minutes of each day.

In light of the foregoing evidence, it is not surprising that the Corporation has never established or assigned a permanent position of Shop Truck Driver at the Halifax Maintenance Centre. By any fair characterization of the evidence, it must be found that the truck is used by a number of employees on an occasional or casual basis, that those employees may be from the Union's bargaining unit, or from other bargaining units of the same Union in the shopcraft trades, as well as supervisors. In these circumstances it is difficult for the Arbitrator to find that the Corporation has violated the collective agreement.

The principles which generally apply in a case of this kind were related in the following terms by this Office in **CROA 2006**:

> 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 involve 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.)

This is plainly not a case where it can be said that work normally performed by members of the bargaining unit has been assigned to persons outside the unit, in circumstances which would cause them to fall under the terms of the collective agreement. At most, what the evidence reveals is a history of shared jurisdiction in respect of the use of the shop truck at the Halifax Maintenance Centre, in circumstances which would not, in any event, amount to the work of a bargaining unit position. For the reasons related in **CROA 2206**, the Union cannot assert a proprietary right to the work in question.

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

March 15, 1996

(signed) MICHEL G. PICHER
ARBITRATOR