CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2825

Heard in Montreal, Wednesday, 12 February 1997

concerning

ONTARIO NORTHLAND RAILWAY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The abolishment of the position of Baggageman/Janitor at the Cochrane Station.

JOINT STATEMENT OF ISSUE:

On July 22, 1996, the company posted a bulletin to Yard Office and Express Freight employees advising that, coincident with the retirement of the incumbent, the position of Baggageman/Janitor was abolished and that two positions of Janitor were being established effective August 1, 1996. One Janitor would work five (5) days per week, three (3) hours per day and the other Janitor would work two (2) days per week, three (3) hours per day.

The union contends that the company violated articles 5.2, 7.1, 12.11, 19.4 and 19.5 of Agreement No. 4 and article 8 of the Employment Security and Income Maintenance Plan when it abolished the Baggageman/Janitor position and established the two positions of Janitor. The union requests that the Baggageman/Janitor position be bulletined and the senior applicant be awarded full compensation.

The company denies any violation of the agreement and declined the union's request.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) M. L'ESPERANCE	(SGD.) J. D. KNOX
NATIONAL REPRESENTATIVE	DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule	– Manager, Labour Relations, North Bay
M. Bernardi	– Manager, Passenger Train Services, North Bay
Y. Gravel	– Supervisor, Food Services, North Bay

And on behalf of the Union:

M. L'Esperance	– National Representative, Toronto
T. McBain	– Witness

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that substantial budgetary cutbacks imposed by the Ontario government compelled the Company to seek greater efficiencies and cost savings in its manpower deployment commencing in 1996. It is common ground that the Company previously maintained a position of baggageman/janitor, exclusively at the Cochrane Station. As part of its program to reduce its labour costs the Company offered retirement incentives, which occasioned the retirement of the incumbent in the baggageman/janitor's position at Cochrane, Mr. T.H. Archer. The employer then decided that the position would be discontinued, with the baggage functions previously performed by the incumbent to be handled by customer services sales agents (CSSA), who are

represented by another union. It is not disputed that at other locations the CSSAs have for some years been involved in the issuing of baggage tickets to customers.

Although it appears that the baggageman/janitor at Cochrane had more extensive involvement, including the actual physical handling and loading of baggage onto a baggage car, with the budgetary cutbacks the Company decided to eliminate that service to passengers, and to essentially normalize the baggage practice at Cochrane, along the same lines as previously existed elsewhere. In the result, therefore, the baggage handling function previously associated with the baggageman/janitor's position has been redistributed to CSSAs in Cochrane, in a manner similar to other locations. That function essentially involves issuing baggage tickets to passengers, who are responsible for loading the baggage in the baggage car themselves, and filling out a waybill for all ticketed baggage. It also appears that part of the function of the baggageman/janitor's position involved the sorting of internal Company mail. That function has, however, been performed elsewhere by CSSAs, and was redistributed to them at the Cochrane Station. The evidence indicates that the mail sorting function, previously performed by the baggageman/janitor, is not onerous and involves something less than fifteen minutes of each day.

The Union submits that the establishing of two part time janitor positions of three hours each is contrary to the provisions of the collective agreement, and that the Company violated the Employment Security and Income Maintenance Plan by failing to provide an article 8 notice in respect of the change implemented. In part, it argues a violation of article 19.4 of the collective agreement which provides as follows:

> **19.4** Established positions shall not be discontinued and new ones created covering relatively the same class of work for the purpose of reducing the rates of pay.

The Arbitrator can appreciate the sentiment which motivates the Union's grievance. It believes, as it reasonably can, that the janitorial work available at Cochrane is, if anything, greater still than was previously the case. Its representative notes that in fact the Cochrane Station has been physically expanded and, with the addition of an adjacent hotel facility, has had an increase in customer traffic. Indeed, the Company does not dispute that the scheduling of janitorial services on a three hour per day basis may well be less than adequate to do the job to the standard that previously existed. The issue to be resolved, however, is whether the Company acted within its own prerogatives in reorganising its work force in the face of substantial government subsidy cutbacks.

Firstly, the Arbitrator cannot accept the Union's suggestion that there has been a violation of the Employment Security and Income Maintenance Plan. Article 8 of that provision requires that notice be given to the Union of operational or organizational change which adversely affects employees. I must agree with the Company that in the instant case no adverse impacts to any employee can be established, as the sole incumbent in the position of baggageman/janitor retired from employment, and no other person can be shown to have lost hours of work or wages which he or she previously earned.

Nor can I find any violation of work jurisdiction protections in the actions taken by the Company. Firstly, there is no provision in the collective agreement to which the Arbitrator is addressed which would arguably vest exclusive work jurisdiction to the baggage handling function or mail sorting to members of the Union's bargaining unit. Indeed, as is admitted, that work has been performed by members of another bargaining unit in the classification of CSSA at a number of other locations. At best, in this circumstance, the Union can only assert concurrent jurisdiction over the bargaining unit functions which were effectively eliminated at Cochrane. In this regard the collective agreement must be applied as a document governing the whole of the work force, and, absent some agreement of the parties, work jurisdiction protections cannot be based on local or departmental practice.

In summary, there are no provisions in the collective agreement which would compel the Company to maintain a full time janitor's position at Cochrane, or indeed at any particular location. This is not a case, in the Arbitrator's view, where the Union has shown that the Company simply reclassified a full time position for the purposes of reducing the burden of wages which it must pay. Clearly, the establishing of a three hour part time janitorial position is a business adjustment, made in good faith, to deal with the realities of substantial budgetary constraints. Certain functions have been eliminated from the previous position, and obviously the hours involved have been radically reduced. As unpalatable as the result may be, it remains one which, in the Arbitrator's opinion, was available to the Company as part of its managerial prerogatives. This case must, in my view, be distinguished from those relied upon by the Union, including **CROA 1812** and **CROA 1948**.

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

February 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR