CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2833

Heard in Montreal, Wednesday, 12 March 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

On October 16, 1996 the Union sent notice to the Company that it wished to withdraw its approval for special shift schedules for weekend staffing in the Winnipeg Customer Support Centre pursuant to a memorandum of agreement dated September 19, 1995.

The Company believes that the Union's decision was arbitrary and unreasonable and would result in employees having to be assigned to work on their assigned days of rest. The Company believes that this is a violation of article 4.10.

The Union denies any violation of the collective agreement.

FOR THE COMPANY:

(SGD.) D. S. FISHER
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. S. Fisher	– Director, Labour Relations, Montreal

And on behalf of the Union:

D. Olshewski	– National Representative, Winnipeg
R. Doherty	– Local Chairperson, Winnipeg

AWARD OF THE ARBITRATOR

The Company grieves that the Union improperly terminated a local agreement concerning hours of work in the Customer Support Centre in Winnipeg. The terms of that agreement, dated September 19, 1995, read, in part, as follows:

> Notwithstanding the provisions of Article 4 of Agreement 5.1, it has been agreed between the parties to establish specific positions within the CSC with the following shifts of duty:
>
> > 2 shifts of 12 hours for weekend relief preceded or followed by 2 shifts of 8 hours positions within the C S Units
>
> The above is subject to cancellation 30 days following receipt of written notice by either party.

It is common ground that on October 16, 1996 the Union gave notice of its wish to cancel the agreement, in accordance with the final paragraph quoted above. The Company argues that it is not entitled to do so, unless it provides a reasonable basis for its request.

The Arbitrator cannot agree. There is nothing within the language of the agreement of September 19, 1995 to place any condition upon the cancellation of the agreement by either party, save compliance with the thirty day notice requirement. Nor can I accept the employer's argument that the agreement in question is in fact subject to the provisions of article 4 of the collective agreement, including article 4.10 which deals with establishing relief assignments by local agreement and provides, in part "Consent to such proposed arrangements shall not be unreasonably withheld in cases where employees would otherwise be required to work on assigned rest days or unreasonable travel time would be involved." Even assuming, without finding, that the provisions of article 4 could arguably be brought to bear as a general matter, the Arbitrator must conclude that by the more specific terms of the agreement of September 19, 1995, stipulating the right of either party to terminate the arrangement simply by notice, the parties effectively agreed to waive any obligations which might be contained within article 4.10.

If I am incorrect in that analysis, I am nevertheless satisfied that in the circumstances the Union was entitled to proceed as it did. As related at the hearing, its officers had substantial concerns with respect to a form of four day compressed scheduling, which, for all practical purposes, was tantamount to a three day work schedule, as well as concerns over the treatment of holidays. In objective terms, therefore, the Union did have a reasonable basis to withhold its approval, even if it could be found that article 4.10 should apply. There is, moreover, nothing within the terms of article 4.10, or the agreement of September 19, 1995, which would require communication of the Union's reasons to the Company.

As indicated at the hearing, the Arbitrator can see no jurisdictional basis for an order of compensation to the Union in this case, as the grievance is in fact brought by the Company. For all of the foregoing reasons the grievance must be dismissed.

March 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR