CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2835

Heard in Montreal, Wednesday, 12 March 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim in behalf of Track Maintenance Foreman T. Grelowski for a total of 12 hours at the punitive rate.

EX PARTE STATEMENT OF ISSUE:

On different dates in February of 1992, Work Equipment Operators operated front end loaders within the Hornepayne Yard. Certain of the tracks that the Operators worked on regularly carry train traffic. At Company insistence, no positive protection (i.e. CROR protection) was provided for these workers. Instead, the Company maintains that the personal protection provided by the Yardmaster was sufficient.

The Brotherhood contends: **1.)** That the protection provided by the Yardmaster was not sufficient since he was not with the workers at all times and since, being just one man, he could not be aware of all train movement everywhere at once. **2.)** That the grievor, a Train Maintenance Foreman, should have been assigned to take positive protection for these workers. **3.)** That by not permitting this, the Company violated both the word and the spirit of the CROR. **4.)** That by not permitting this, the Company violated Articles 8.8 and 18.6 of Agreement 10.1, in addition to any and all other applicable provisions of the collective agreement.

The Brotherhood requests that the grievor be compensated for 12 hours at the punitive rate and that it be ordered that, in future, positive protection be taken for such employees in such situations.

The Company denies the Brotherhood's contentions and declines its request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Laurendeau	– Assistant Manager, Labour Relations, Montreal
J. Blanchet	– Track Supervisor, Malport

And on behalf of the Brotherhood:

D. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
J. Rioux	– Director of Organizing, Training and Research, Ottawa

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that for a period of some four days in February of 1992 the Company assigned Work Equipment operators to remove snow from roadways and tracks within the Hornepayne Yard, operating front end loaders. The Brotherhood objects that the operators were generally assigned to work alone in Yard Traffic Control (YTC) territory where, unlike on the main line, they could not have a track occupancy permit. They were, as a result, vulnerable to the somewhat unpredictable movements of equipment within the yard. In the Brotherhood's submission the prior practice had been for employees working in that circumstance to do so under the protection of a track maintenance foreman assigned to perform the duties of a safety watchman in respect of their operations.

The Company asserts that there was no contractual obligation to assign a track maintenance foreman or other staff to perform the role of watchman. Stressing that snow removal operations can involve a substantial number of individual pieces of machinery, including front end loaders, graders and sweepers, working in a number of different locations, it maintains that there was adequate protection for the employees by virtue of their being under the general direction of the yardmaster, or controller, with whom the operators could communicate by radio.

The Company refers the Arbitrator to portions of the Yard Traffic Control Operating Manual No. 3. Paragraphs 9.1 and 9.2 of section 9 of that document read as follows:

> **9.1** Track maintenance work within the YTC territory must not be undertaken without first obtaining permission from the CONTROLLER. Such instructions must be repeated.
>
> **9.2** When track maintenance work is to be carried out in YTC territory with or without a track unit, the CONTROLLER will arrange for protection against all movements.

The Arbitrator can appreciate the concern which lies behind the grievance. It does not appear disputed that in years past, when staffing levels were higher, it was not uncommon for the Company to assign a watchman to oversee snow removal operations, as a measure of added safety. The Brotherhood's view that for employees to work alone in assignments which involve fouling rail lines within a busy yard is less than ideal from the standpoint of safety may well have some merit. However, the jurisdiction of the Arbitrator must be found within the terms of the collective agreement and those parts of the **Canada Labour Code** which govern the arbitration process.

The issue at hand is whether the Company was under a collective agreement obligation to assign a track maintenance foreman to function as a watchman in respect of the snow removal operations at Hornepayne in February of 1992. By its own admission, the Brotherhood can point to no provision of the collective agreement which specifically mandates such an assignment, or entitles any employee to claim watchman's work. In the circumstances, I cannot find that there is any violation of the collective agreement. Nor can I conclude, given the absence of any contractual obligation, that the employees in question were unjustly dealt with, assuming, without finding, that that is an arbitrable issue. It should be noted that no significant argument was addressed to that question, notwithstanding a recent decision of the Court of Appeal of the Province of Quebec in relation to an earlier award of this Office, **CROA 2187**.

Finally, it should be stressed that nothing within this award should be construed as limiting the rights of employees to claim such protections as may be available to them with respect to allegedly unsafe work, as may be found within the provisions of the **Canada Labour Code**. The procedures and remedies provided for that kind of issue, however, are not matters which arise within the four corners of this grievance, or the jurisdiction of this Office, as a general matter.

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

March 14, 1997

(signed) MICHEL G. PICHER
ARBITRATOR