CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3001

Heard in Calgary, Wednesday, I I November 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND UNITED TRANSPORTATION UNION)

EX PARTE

DISPUTE:

Loss of preference rights of certain employees of the fortner Northern Alberta and Great Slave Lake Railways which resulted from the Company's sale of their Northern Alberta lines to Railink Canada Limited, effective May 3, 1998.

COUNCIL'S STATEMENT OF ISSUE:

The C.C.R.O.U. and the Company have agreed that one issue remains outstanding from the memorandum of agreement signed March 31, 1998, negotiated in accordance with article 89 of agreement 1.2 and article 139 of agreement 4.3, addressing the adverse effects to employees at McLennan, AB, Roma Junction, AB and Hay River, NT.

Certain employees affected by the sale of the Northern Alberta lines to Railink Canada Ltd. held preference rights, in accordance with addenda 32, 32A and 32B of agreement 1.2 and addenda 27, 27A, 27B and 39 of agreement 4.3, at the former terminals at McLennan, AB, Roma Junction, AB and hay River, NWT.

The Council's position is that the issue of preference rights for those employees of the former NAR and GSL territories is an adverse effect and should be included in the memorandum of agreement, dated March 3 1, 1998.

The Company disagrees.

In the result, the parties agreed that this issue will be presented at arbitration, for a decision solely as to whether or not the issue of preference rights is an adverse effect, and should be included in the memorandum of agreement, dated March 31, 1998.

FOR THE COUNCIL: (SGD.) **D. J. SHEWCHUK** FOR: **GENERAL CHAIRMAN BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

There appeared on behalf of the Company:

M. Sherrard - Counsel, Toronto
A. E. Heft - Manager, Labour Relations, Toronto
J. Bauer - Human Resources Business Partner, Great Plains District, Edmonton
G. Search - Manager, Network Rationalization, Toronto
S. M. Blackmore - Labour Relations Associate, Great Plains District, Edmonton
K. Morris - Human Resources Associate, Great Plains District, Edmonton
L. Bronson

And on behalf of the Council: D. J. Shewchuk D. Brummund M. Janssen
- District Superintendent, Transportation, Great Plains District, Edmonton
- Sr. Vice-General Chairman, BLE, Saskatoon
- Vice-General Chairman, BLE, Kamloops
- Vice-General Chairman, UTU, Winnipeg

AWARD OF THE ARBITRATOR

This arbitration arises under the material change provisions of the collective agreements, following the sale of certain subdivisions of the Company to Railink Canada Ltd. The territory conveyed to Railink includes the former Great slave Lake Railroad (GSL) and the territory of the former Northern Alberta Railways Company (NAR). It is common ground that under the collective agreements, prior to the transfer, locomotive engineers, conductors and trainpersons previously employed by those two railways retained preference rights to work on the former GSL and NAR territories.

Some forty-three running trades employees were affected by the sale of the lines in question. The parties successfully negotiated a memorandum of agreement under each of the collective agreements dealing with the adverse effects on the employees in question, save in relation to a single issue, namely whether there are particular adverse effects to those employees with preference rights on the former NAR and GSL railways. The Arbitrator is asked to rule upon whether there are adverse impacts particular to the employees concerned, and if so to direct the parties to negotiate in respect of terms and conditions to minimize such adverse impacts.

Upon a review of the material filed the Arbitrator has substantial difficulty with respect to the position presented by the Council. It is common ground that the employees affected by the sale of the lines were given a number of options, one of which included remaining on the same territory in the employment of Railink Canada Ltd. It appears that the purchaser company has entered into a collective agreement with the various unions representing employees on the territories in question. Significantly for the purposes of this dispute, employees with preference rights over the territories were given preferential opportunities to hire

on with the new employer. Those employees with preference rights who opted to work elsewhere in the Company's operations have been afforded the same protections as all other employees, including such benefits as moving expenses and maintenance of earnings protection.

In the circumstances the Arbitrator is unable to see on what basis the Council can claim for the employees in question significantly adverse effects particular to themselves as persons with preference rights on the former NAR and GSL territories. To the extent that they could claim preference rights to work on the subdivisions in question, those rights operated as part of the transfer of the lines and business to Railink Canada Ltd. That is evidenced by the fact that the employees with preference rights were given the first opportunity to continue to work for the new employer over their traditionally protected territory. In that circumstance I find it impossible to conclude that there has been a particular adverse effect which can be said to relate to their pre-existing preference rights. In effect those rights were little affected, save perhaps that the protected employees' terms and conditions of employment might differ if they opted to use those rights to gain employment preferentially with the successor railway.

There is, moreover, no evidence before the Arbitrator adduced by the Council to demonstrate that any employee affected by the change has in fact suffered a reduction in earnings or benefits, whether by opting for employment with Railink Canada Ltd. or by exercising seniority elsewhere within the Company's operations. In these circumstances there is simply no basis upon which to sustain the theoretical claim that the transfer of the territory has resulted in adverse consequences particular to those employees with preference rights over the fori-ner GSL and NAR lines. In the alternative, should it be arguable that there was an adverse effect particular to the employees in question, I would rule that those effects are amply mitigated against by the terms of settlement negotiated between the parties.

For all of the foregoing reasons the Council's claim must be dismissed.

November 17, 1998

MICHEL G. PICHER
ARBITRATOR