CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3032
Heard in Montreal, Tuesday, 10 February 1999
concerning
ST. **LAWRENCE & HUDSON RAILWAY COMPANY**
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)
EX PARTE

DISPUTE:

The dispute involves the abolishment of Assistant Conductor's positions on assignments G, H and I on Vaudreuil Subdivision as per bulletin no: 144 dated April 11, 1995.

EX PARTE STATEMENT OF ISSUE:

The Union submits that the Company failed to meet its contractual obligation to notify the Local and General Chairperson of the companies intentions to reduce the consist of these assignments (which existed for more then 20 years) as provided in Article 6, clause (b).

> ARTICLE 6 - CONSIST OF CREWS - PASSENGER TRAIN SERVICE
>
> (b) 1. Should the Company desire to reduce the consist of any passenger train crew it shall notify the Local and General Chairman of the Union in writing of its desire to meet with respect to reaching agreement on a reduced crew consist. The time and place, which shall be on the Region concerned or where runs extend over more than one Region on one of the Regions concerned, for the Company and Union representatives to meet shall be agreed upon within 21 calendar days from the date of such notice and the parties shall meet within 30 calendar days of the date of such notice. It is understood, however, that if the number of cases to be handled at any particular time make the time limits specified herein impractical, on request of either party, the parties shall mutually agree on a practical extension of such time limits.

The effect of the Company's actions has resulted in a compromise to safety by placing an undue burden on the reduced crew consist.

The Union requests that the Assistant Conductor's positions be immediately reinstated. Furthermore, if the company subsequently intends to reduce the crew consist that they do so in compliance with Article 6, clause (b) and relating provision. Considering that the actions of the company were premature of the above obligations the Union requests redress of any wage loss experienced by all affected employees.

The Company declined the Union's appeal.

FOR THE COUNCIL: (SGD.) **D. A. WARREN GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

G. Chehowy - Manager, Labour Relations, Toronto

And on behalf of the Council:

D. A. Warren - General Chairperson, Toronto

D. Fielding - Local Chairperson, Toronto

AWARD OF THE ARBITRATOR

As an initial matter the Company objects to the arbitrability of this grievance. It submits that it was resolved by the parties during the course of discussions concerning a substantial number of grievances. Arguing that the matter has been settled, the Company submits that it is no longer a dispute which can be submitted to arbitration.

Upon a review of the material filed the Arbitrator cannot sustain the preliminary objection of the Company. There is, quite simply, no indication in writing from any officer of the Council agreeing to the settlement or resolution of the grievance. The entire basis for the Company's objection is a note made by its own officer, Mr. Bruce Butterworth, in relation to a meeting between the parties which took place on June 22, 23 and 24, 1997 at Toronto, for the purpose of resolving a substantial number of grievances. In an e-mail dated July 2, 1997 Mr. Butterworth noted to the Council his understanding that the matter was withdrawn. The Council did not provide its concurrence to Mr. Butterworth's suggestion. Indeed, as indicated in the representations of the Council's representative, matters were considered settled or withdrawn by the Council only on the basis of its officer's signature to that effect on the Company file. No such written instrument was ever executed with respect to the instant grievance. On that basis the position of the Company must be rejected.

I turn to consider the merits of the dispute. The Council alleges that the Company violated the collective agreement by reducing the consist of crews for passenger train service on the West Island of Montreal. Specifically, it submits that the Company violated article 6(b) of the collective agreement governing consists of crews in passenger train service, the text of which is found in the Council's ex parte statement of issue.

It is common ground that the Company did reduce the crews of three West Island commuter assignments by removing assistant conductors. In the result, those assignments, like four other assignments, thenceforth operated with a conductor and a brakeperson, effective April 11, 1995.

The Arbitrator cannot sustain the position of the Council in this grievance. As indicated by the Company's representative, on September 30, 1980 the Company and the Council executed a specific agreement with respect to the crew consist of trains in the West Island commuter service. That agreement reads, in part, as follows:

It is agreed that pursuant to the provisions of article 6, clause B, of the collective agreement as amended, that effective at the change of time October 26, 1980, the crew consist of passenger trains operating between Montreal and Vaudreuil and between Montreal and Rigaud will be one (1) conductor and one (1) trainman.

It is understood that the application of the above is to apply to:

a) all types of equipment including self-propelled single or multiple car service (RDC)

b) double-deck cars and B coach equipment 800 series and other type of equipment.

This agreement is subject to revision or cancellation upon sixty (60) days written notice from either party.

It is not disputed that the above agreement was amended on January 31, 1992, and that part of the amendment was to remove the cancellation clause. In the result, the agreement remains in force to the present date.

The Arbitrator is therefore satisfied that the agreement of September 30, 1980 states the Company's crew consist obligation in respect of passenger service on the Montreal West Island. It appears that for a period of time the Company decided to establish the additional position of assistant conductor to assist in the collection of passenger fares. When, in April of 1995 it decided to discontinue that innovation the instant grievance was filed. The grievance cannot succeed, however, as the change involved in the removal of the assistant conductor does not constitute a reduction in "the consist of any passenger train crew" within the meaning of article 6(b) of the collective agreement. The contractual obligation in respect of the crew consist for the trains in question is established by the agreement of September 30, 1980, which agreement has not been amended or violated as relates to the minimum crew consist of one conductor and one trainperson.

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

February 12, 1999

MICHEL G. PICHER
ARBITRATOR