CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 3062
Heard in Montreal, Wednesday, 12 January 2000
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The implementation of the arbitrator's award in CROA No. 3062.

EX PARTE STATEMENT OF ISSUE:

In the above-mentioned award, the Arbitrator, allowing the grievance in part, made the following declaration and order:

> ... The Arbitrator finds and declares that the Company violated article 20.1 of the Supplemental Agreement by contracting out work which resulted -in the elimination of positions, presently estimated at approximately seven in number, from the permanent bargaining unit complement. The Company is directed to cease the violation by restoring the appropriate number of positions to the bargaining unit complement. The matter is referred back to the parties for discussion of the remedy most suitable in the circumstances. I retain jurisdiction in the event of any dispute in that regard, or generally concerning the interpretation or implementation of this award.

The employer has failed to restore the appropriate number of positions to the bargaining unit complement, and the parties have been unable to reach final agreement on the remedy to be applied.

The Union submits that a total of seven (7) full-time permanent positions should be added to the garage complement, as it was at the time of the award, without reducing jobs elsewhere in the unit to compensate therefore. The Union further requests that to the extent that fewer than seven (7) positions were, are now, or may continue to be added to the complement, an order be made requiring the Company to reimburse the Union for any lost union dues and making whole any employees who may have incurred losses through any refusal or delay by management to restore the positions in question.

FOR THE UNION:
(SGD.) A. ROSNER
NATIONAL REPRESENTATIVE
There appeared on behalf of the Company:
A. deMontigny
D. Gagn6
M. Vachon

C. Roy
- Manager, Labour Relations, Montreal
- Manager, Intermodal Operations, Montreal
- Chief Coordinator - Operations, Montreal
- Manager, Intermodal Equipment, Montreal

And on behalf of the Union:

A. Rosner - National Representative, Montreal
J. Savard - Bargaining Representative, Montreal
R. Latendresse - Local Representative, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The parties have been unable to agree on the implementation of the award herein dated July 16, 1999. The final paragraph of that award reads as follows:

> The grievance is therefore allowed in part. The Arbitrator finds and declares that the Company violated article 20.1 of the Supplemental Agreement by contracting out work which resulted in the elimination of positions, presently estimated at approximately seven in number, from the permanent bargaining unit complement. The Company is directed to cease the violation by restoring the appropriate number of positions to the bargaining unit complement. The matter is referred back to the parties for discussion of the remedy most suitable in the circumstances. I retain jurisdiction in the event of any dispute in that regard, or generally concerning the interpretation or implementation of this award.

The material before the Arbitrator establishes that on or about July 8, 1999 there were twenty-five employees employed on a full-time basis in the intermodal garage at Monterm. One of those employees occupied a temporary position while two were then on sick leave. The Arbitrator accepts the fundamental position argued by the Union, which is that for the purposes of article 20.1 of the collective agreement it is the number of "full time employees" which is not to be disturbed by reason of contracting out. It is therefore necessary to determine a benchmark count of full time employees for the purposes of article 20.1 as of July of 1999 as compared with the present time.

In the Arbitrator's view two adjustments need to be made in the count of full time employees as of July of 1999. Firstly it must be acknowledged that although employed full time, employee J. L. Lévesque held a position which was temporary and which, arguably, he would have relinquished had either of the two employees on sick leave returned to work. For practical purposes, therefore, a realistic count of full time employees should be assessed at twenty-four individuals, bearing in mind that Mr. Lévesque appears to have been operating in something of a relief function.

The second adjustment concerns the effect of the proper reduction of three positions from the intermodal garage following a material change. That

fact would therefore further reduce the threshold number of full time employees in July of 1999 to twenty-one. It is to that number that the Company is required to add positions, pursuant to the award herein of July 16, 1999. The Arbitrator is satisfied that the appropriate number of positions to be added is seven.

The Union submits that the requirements of article 20.1 can be satisfied only if seven employees are added to the complement of employees at the intermodal garage. It submits that the contracting out impacted the number of full time employees in that part of the Monterm operation, and it is there that the remedial adjustment must be made. The Union's representative suggests that it would be absurd to find, for example, that the Company could argue an increase in full time employees in Vancouver to counter-balance the loss of employee complement occasioned in Montreal at Monterm, by reason of contracting out.

The Arbitrator is persuaded that the concerns and example raised by the Union go too far. For the purposes of this dispute it is sufficient to find, as I am satisfied, that the intention of article 20.1 is to protect the number of full time employees at a given terminal or facility, where the actual contracting out occurs. Any other basis of assessment would make the administration of article 20.1 extremely difficult, if not impossible from the standpoint of rational calculation and monitoring. I therefore agree with the Union that it is appropriate to look to the number of full time employees in the complement of the Monterm facility for the purposes of this dispute. I cannot agree with the Union's representative, however, that the language of article 20.1 requires the maintenance of a particular number of employees in a given classification or department within the terminal. That is simply not reflected on the language of article 20. 1, nor in my view can it be necessarily inferred from its terms.

It is, of course, appropriate to examine the number of full time employees in the intermodal garage for the purposes of determining whether the Company has complied with the Arbitrator's direction, which is now clarified to confirm that seven full time employees were to be restored to the overall complement at Monterm. Based on the figures provided by the Company there are presently twenty-six full time positions in the intermodal garage, in addition to one employee on sick leave. It is important to stress, however, that the number of full time positions does not correspond to the present count of full time employees. It does not appear disputed that five of the positions counted by the Company are in fact vacant, being positions established to satisfy the conditions of the award, but for which qualified applicants have not yet be found. For the purposes of clarity, it should be stressed that the establishing of new positions to terminal complement does not satisfy the conditions of the award, to the extent that those positions remain vacant.

The first question to address is the number of full time employees which must be added to the Monterm facility to satisfy the award. Based on the

numbers provided, which are admittedly restricted to the intermodal garage, it is clear that the Union is correct in its position that the Company has not, to date, complied with the award by the adjustments which it has made to this point. Taking the July 1999 bench mark of twenty-one full time employees, and adding an additional seven, the confirmation of an actual complement of twenty-eight full time employees (not positions on paper) in the intermodal garage would satisfy the award. In fact there are only twenty-one full time employees working in the intermodal garage at the moment. It is clear to the Arbitrator that the Company must add seven full time employees to the Monterm. staff. It is not, however, required to ensure that those employees are necessarily assigned to the intermodal garage. Nor is it compelled by the award to undertake any particular burden of training a minimum number of employees in any given classification or assignment.

For the foregoing reasons the Arbitrator is satisfied that the Company has, as yet, failed to satisfy the terms of the award herein. It is directed to recall or hire such number of individuals as will result in the addition of seven employees to the overall Monterm complement of full time employees as of the date of this award. The Company retains full discretion as to the classifications and assignments to be filled by the seven additional employees, and in that regard it does remain open to it to place four of the newly enlisted employees on the spareboard, as it proposes to do. Further, although I do not see the instant case as one which justifies a broad order of compensation, save as regards such future compensation as might fairly be calculated from the date of this supplementary award, I do accept the submission of the Union's representative that it is appropriate to direct, as I hereby do, that that the Union be compensated for all Union dues owing for the seven full time employees who should have been hired, or recalled, calculated from July 16, 1999.

The Arbitrator continues to retain jurisdiction in the event of any further dispute concerning the implementation in this matter.

January 14, 2000

MICHEL G. PICKER
ARBITRATOR