

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3111

Heard in Calgary, Wednesday, 10 May 2000
concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

DISPUTE:

This concerns a dispute between the parties with respect to the entitlement to benefits contained in the material change provisions outlined in the memorandum of agreement pertaining to the transfer of trackage in the Ottawa Valley to the Trans-Ontario Railway.

JOINT STATEMENT OF ISSUE:

On July 4, 1996 a material change notice was properly served concerning the leasing of Company owned rail lines on the Chalk River, North Bay, Temiscaming and Cartier Subdivisions to the Trans-Ontario Railway Company.

Negotiations of measures which minimized the adverse effects of this material change were successfully concluded and signed on September 7, 1996.

On December 17, 1996, a grievance letter was advanced on behalf of Locomotive Engineer G.L. Fitzpatrick of Montreal, Quebec, regarding his entitlement to benefits.

The Council contends that Locomotive Engineer G.L. Fitzpatrick is entitled to material change benefits payable as outlined under the provisions of the memorandum of agreement pertaining to the transfer of trackage in the Ottawa Valley to the Trans-Ontario Railway.

The Company maintains that this employee is not eligible for the material change benefits which have been requested and has declined the Council's request.

FOR THE COUNCIL:

(scm.) **R. S. MCKENNA**
GENERAL CHAIRMAN
DISTRICT

FOR THE COMPANY:

(SGD.) **R. S. SEENEY**
FOR: DISTRICT GENERAL MANAGER, LAKES

There appeared on behalf of the Company:

R. Smith	- Labour Relations Officer, Calgary
K. E. Webb	- Manager, Labour Relations, Calgary
M. E. Keiran	- Director, Labour Relations, Calgary
R. K. Sutherland	- Assistant Labour Relations Officer, Calgary

And on behalf of the Council:

R. S. McKenna	- General Chairman, Calgary
B. Brunet	- Provincial Legislative Representative, Montreal

AWARD OF THE ARBITRATOR

The Council claims that the Company violated the memorandum of agreement negotiated with respect to the transfer of the Company's Ottawa Valley lines to the Trans-Ontario Railway. Specifically, it submits that Montreal based employee G.L. Fitzpatrick should have been offered a retirement opportunity under the terms of the agreement. The Company takes the position that Mr. Fitzpatrick was not eligible for any material change benefits arising out of the transfer of the Ottawa Valley lines because, as a locomotive engineer fully employed in Montreal, he was not adversely affected within the meaning of the parties' memorandum of agreement. Indeed, the Company submits that the agreement was crafted, in part, precisely to prevent what it characterizes as the attempted parachuting by Mr. Fitzpatrick into the benefits of the agreement.

The agreement in question, referred to as the memorandum of agreement, was signed between the Company and the Council on September 7, 1996. Article 1 makes reference to the effective date of the material change, being the lease of trackage on the Chalk River,

North Bay, Temiscaming and Cartier Subdivisions to the Trans-Ontario Railway Company to be effective on or about October 29, 1996. The article notes that eighty-six positions, at North Bay and Smiths Falls, in the classifications of locomotive engineer and conductor/ trainman are to be abolished. With respect to the ambit of the agreement's benefits, article 2 of the memorandum deals specifically with defining affected employees entitled to the benefits of the agreement. Subparagraph 2.4 of article 2.0 reads as follows:

2.4 In order to be considered as an affected employee as defined in Appendix B, employees must have been home terminalled at North Bay or Smiths Falls for at least three months prior to the implementation of the material change.

Appendix B of the memorandum of agreement more specifically addresses the allocation of benefits under the material change. Paragraph 4 of that appendix reads as follows:

4. Available Early Separation opportunities will be allocated to eligible employees in the following manner:

- i) attrition opportunities will be offered first to affected employees in the job category specified, to a maximum of the number allocated to that job category in Item 1.0, in the order of their seniority in that job category.
- ii) any remaining opportunities will be offered to eligible employees working as a trainman, yardman or locomotive engineer at affected locations as well as significantly adversely affected locomotive engineers on the Ottawa Promotion District in order of seniority on the Trainmen's list.

To succeed under this grievance Mr. Fitzpatrick must, in accordance with the clear and categorical terms of the memorandum of agreement, establish that he is an affected employee as defined in Appendix B. To do that he must, by the plain language of article 2.4 of the memorandum of agreement, have been home terminalled at North Bay or Smiths Falls for at least three months prior to the implementation of the material change. It is obvious that Mr. Fitzpatrick does not meet that condition, even though he might, as a Montreal employee, come under the Ottawa Promotion District established for the purposes of the agreement.

Much of the Council's case appears to be motivated by the treatment of another employee who, at the time of the material change, held a conductor's assignment at Gatineau, and who was junior in locomotive engineer seniority to Mr. Fitzpatrick. That individual, Mr. G.E. Lamothe, was offered a conductor-only early separation opportunity as part of the arrangements made in relation to transfer of the Ottawa Valley lines. In the Arbitrator's view the treatment of Mr. Lamothe cannot improve the entitlements of Mr. Fitzpatrick to benefits or protections under the terms of the memorandum of agreement. The Council contends that Mr. Lamothe might not have properly been entitled to a conductor-only early retirement opportunity, as Gatineau was not under conductor-only operations, and was, for the purposes of conductors' collective agreement, an outpost of Montreal, and not of Smiths Falls. In my view, at most that would establish an error which might have been grievable by the United Transportation Union, as part of the Council, alleging a misapplication of the Conductor-Only Agreement. However the fact that Mr. Lamothe coincidentally held locomotive engineer seniority junior to Mr. Fitzpatrick is of no consequence for the purposes of Mr. Fitzpatrick's entitlement under the terms of the memorandum of agreement here at issue. For the reasons touched upon above, by the clear conditions of article 2.4 of that memorandum of agreement Mr. Fitzpatrick does not qualify as "an affected employee as defined in Appendix B", because he was not home terminalled in North Bay or Smiths Falls for at least three months prior to the implementation of the material change. By establishing those clearly delineated benefit fences, the parties obviously intended to prevent claims such as the one now advanced by Mr. Fitzpatrick, and to confine the negotiated benefits to employees in the affected locations who were truly adversely impacted by the material change. Even if it could be shown that Mr. Lamothe should not have been given a conductor-only early retirement opportunity, or that one of the contemplated locomotive engineer early retirement opportunities was never granted, Mr. Fitzpatrick could not, in any event, bring himself within the circumscribed

provisions of eligibility.

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

May 12, 2000

MICHEL G. PICHER
ARBITRATOR