

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3370**

Heard in Montreal, Thursday, 11 September 2003

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

The combining of the bulletined established position of Third Trick Vancouver Terminal with the bulletined established position of Third Trick Cascade on September 17, 2001 for a period of eight hours.

JOINT STATEMENT OF ISSUE:

On September 17, 2001, the Company, upon reviewing its operational requirements, determined that its operations could be protected by combining the duties of the Cascade RTC position with those of the Vancouver Terminal position for the entire shift. RTC S. Basra worked this combined position.

The Union advanced a grievance contending the Company was in violation of both the collective agreement and the July 24, 1998 Local Drafting Agreement.

The Company maintains that it was not in violation of either of these two agreements and declined the grievance.

FOR THE UNION: FOR THE COMPANY:

(SGD.) J. RUDDICK (SGD.) J. J. WORRALL
GENERAL CHAIRMAN FOR: GENERAL MANAGER, NMC

There appeared on behalf of the Company:

J. Worrall - Labour Relations Officer, Calgary
S. Seeney - Manager, Labour Relations, Calgary

And on behalf of the Union:

K. Essery - Vice-General Chairwoman, Calgary
J. Ruddick - General Chairman, Burlington
G. Hallé - Canadian Director, Ottawa
D. MacIver - Local Chairman, Montreal

F. Leeb - Local President, Calgary

AWARD OF THE ARBITRATOR

It is common ground that while the Joint Statement of Issue refers to the circumstance which occurred in respect of the Cascade RTC desk on September 17, 2001, this award also applies to similar circumstances which arose on September 26, 2001 in relation to the combining of the Saskatchewan West and the Saskatchewan East RTC desk positions.

The dispute concerns the prerogatives available to the Company to deal with a manpower shortage when, for example, an employee calls in sick, as occurred on September 17, 2000. On that occasion the Company changed the assignments of a number of Rail Traffic Controllers which resulted in Rail Traffic Controller Basra, who was assigned to work the Third Vancouver Terminal RTC desk also covering the Cascade desk, described as then having "minimal traffic volumes" in the Company's submission.

Part of the Union's submission is to the effect that the Company is violating the collective agreement by combining desks, in disregard of the system of permanent bulletins, as a first resort in the face of a temporary vacancy rather than as a last resort. In that regard it draws to the Arbitrator's attention a number of provisions of the collective agreement, including article 5.02.3 which reads as follows:

5.02.3 Permanent unassigned RTCs will perform all work required of them, which shall include filling permanent assigned RTC vacancies under 5 days duration when instructed by the Company. If no permanent unassigned RTCs are available, then such relief work will be performed by spare RTCs.

The Company does not dispute its obligation to first have recourse to permanent unassigned RTCs to cover a short term, temporary vacancy, and failing the availability of a permanent unassigned RTC, to then call an available spare RTC to perform the work. In the Arbitrator's view, however, it remains the prerogative of the Company to determine whether a "vacancy" exists so that it needs to be filled, or whether it can deal with the situation by adjusting the assignments of staff who are on duty. (See **CROA 2264, 2274, 2166.**)

Part of the dispute appears to be, assuming that a vacancy exists, the obligation of the Company where unassigned or spare employees are not available within the contemplation of article

5.02.03. The Union's submission appears to suggest that in that circumstance the Company is compelled to resort to offering overtime to a rail traffic controller who is then not on duty, before combining desks which are the subject of regular bulletins. In that regard the Union points to minutes of a meeting held concerning the assignment of temporary vacancies at Montreal. By the terms of those minutes, dated January 11, 2001, if a vacancy cannot be filled with a permanent unassigned or spareboard RTC the next step is to canvass the regular assigned RTC overtime list.

The Company's representatives argue that the arrangement made in Montreal is, at best, a local arrangement, and not a collective agreement undertaking binding on the Company in its rail traffic operations at Calgary. The Union's representative submits that the Montreal minutes simply reflect a proper interpretation of the collective agreement.

With respect to the issue of the of the obligation to canvass overtime before combining desks the Arbitrator has some difficulty with the position of the Union. Very simply, no provision within the language of the collective agreement has been drawn to the Arbitrator's attention which would, either on its face or implicitly, require the Company to resort to overtime among regular assigned RTCs once the sequence of replacement in article 5.02.03 has been exhausted. Similarly, there is no express language within the collective agreement which would prevent the reorganization of the workforce, on a temporary basis, including the combining of desks, to deal with a temporary absence on short notice. As noted above, the Company need not treat a short term absence as a vacancy if it can do without the work being done, or if it can cover it off by the reassignment of staff.

In the result, the Arbitrator finds and declares that in the circumstances which arose on September 17, 2001 resulting in the combining of the Vancouver and Cascade desks, as well as on September 26, 2001 in relation to the Saskatchewan West and Saskatchewan East desks, assuming a vacancy was declared, the Company was first under the obligation to comply with the sequence of replacement described in article 5.02.03. Failing the possibility of permanent unassigned RTCs or spare RTCs being available, the Company was under no obligation to resort to overtime, and was not prevented by any provision of the collective agreement from combining desks for the period of the temporary vacancy. Therefore, to the extent that the Union seeks a declaration that the Company is prohibited from combining

assignment desks during a particular tour of duty, the grievance must be dismissed.

September 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR