

**CANADIAN RAILWAY OFFICE OF ARBITRATION**

**CASE NO. 3382**

**Heard in Calgary, Wednesday, 12 November 2003**

**concerning**

**CANADIAN NATIONAL RAILWAY COMPANY**

**and**

**UNITED TRANSPORTATION UNION**

**EX PARTE**

**DISPUTE:**

The abolishment of Traffic Coordinators and use of management and Train Movement Clerks at Clover Bar Yard in Edmonton, Alberta.

**UNION'S STATEMENT OF ISSUE:**

In August of 1999, the Company abolished four Traffic Coordinator positions in Clover Bar Yard in Edmonton. The Union claimed that this constituted a material change in working conditions and that, as such, adverse effects on the membership had to be addressed. The Company maintained that the positions were not abolished but the duties were transferred to West Tower Traffic Coordinators. This position was upheld by the arbitration in CROA 3143.

However, despite the Company's position that management and Train Movement Clerks performed this work only during the transitional period, in reality the work was transferred to West Tower Traffic Coordinators in name only. The work, which formerly belonged to the Clover Bar Traffic Coordinators was and is still being performed by Train Movement Clerks and management. It is the Union's position that this work should be performed by Traffic Coordinators and that the Company has improperly given the work to Train Movement Clerks.

The Union requests that the Traffic Coordinators be reinstated at Clover Bar and that the Company cease and desist the practice of management and train movement clerks performing this work. Additionally, the Union requests that those employees adversely affected be made whole.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

There appeared on behalf of the Company:

S. Blackmore – Manager, Human Resources, Edmonton

T. Brown – Superintendent – Transportation, Edmonton

R. Reny – Sr. Manager, Human Resources, Edmonton

R. Maze – Transportation Supervisor, Edmonton

And on behalf of the Union:

M. Church – Legal Counsel, Toronto  
 R. A. Hackl – Vice-General Chairperson, Edmonton  
 W. Franko – Local Chairperson, Edmonton  
 S. Hartley – Local Chairperson, Edmonton  
 Wm. Moe – Traffic Coordinator, Edmonton  
 M. Zenowski – Yard Conductor, Unassigned Traffic Coordinator, Edmonton  
 D. Schneider – Yard Conductor, Unassigned Traffic Coordinator, Edmonton  
 J. Carroll – Yard Conductor, Edmonton

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator amply demonstrates that the work of traffic coordinators has continued to be available in Clover Bar Yard from the time of the grievance to the present. That work has not been performed by traffic coordinators in the West Tower at Walker Yard, assuming that it properly could be, given radio constraints. The evidence establishes, among other things, that work normally assigned to traffic coordinators at Clover Bar Yard was in fact performed by assistant superintendents and train movement clerks for some four years.

As part of the Union's case, its counsel submits that the Company deliberately attempted to mislead the Arbitrator in obtaining the decision of this Office in **CROA 3143**, which concerned the abolishment of the four traffic coordinator positions at the Clover Bar Yard in Edmonton, a decision which issued on September 18, 2000. Counsel submits that what the Company then characterized as a transitional situation has in fact become permanent, and that the Arbitrator was misled to the conclusion that the West Tower traffic coordinators would oversee operations at Clover Bar.

As regards the available work, the evidence squarely sustains the position put forward by the Union. I am not satisfied on the evidence that the Company originally intended to deceive the Arbitrator and to improperly remove the work of traffic coordinators and place in the hands of others, contrary to the collective agreement, at the time it abolished the positions in Clover Bar Yard. However, the evidence before me is overwhelming that things clearly did not work out as the Company had originally planned. In the result, car volumes at Clover Bar Yard, and the need for traffic coordinator functions to be performed, have continued largely unchanged. Notably, that work has not been performed by traffic coordinators at the West Tower of Walker Yard, and indeed the evidence would indicate disturbingly that on at least one occasion Company supervisors attempted to falsify train list documents to indicate that they had been handled by traffic coordinators in the West Tower when in fact they had not.

I am satisfied, on the evidence before me, that there has been and is presently sufficient traffic coordinator's work at Clover Bar Yard to sustain three regular positions as well as a relief position in the classification of traffic coordinator. The assignment of the work, on a consistent basis over some four years since the abolishment of the traffic coordinators' positions on August 21, 1999, has been contrary to the requirements of collective agreement 4.2. The evidence confirms that in effect the Company simply transferred the work of traffic coordinators into the hands of supervisors and train movement clerks to achieve greater efficiencies and savings. While that goal may be understandable, the means adopted to achieve it are not permissible under the provisions of the collective agreement, absent agreement with the Union or a genuine material change as contemplated within that document.

With respect to remedy, the Arbitrator deems it appropriate to simply declare that the Company has violated the collective agreement and that the work in question should at all times have been assigned and is to be assigned to traffic coordinators. Whether it is appropriate to affirmatively direct the establishment of the positions in question, with or without compensation, or whether some other outcome should apply, for example the application of material change provisions under the collective agreement, the appropriate result should first be considered by the parties themselves. Should they be unable to arrive at a remedial result the Arbitrator retains full jurisdiction to make such remedial order and directions as may ultimately be appropriate.

November 17, 2003

MICHEL G. PICHER  
ARBITRATOR