

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3446**

Heard in Montreal, Wednesday, 15 September 2005

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

The article 1.1(b) Notice dated October 7, 2003 abolishing the Third Trick Winchester/Hamilton RTC desk in the Montreal Operations Centre.

JOINT STATEMENT OF ISSUE:

On October 7, 2003 the Company served noticed under article 1.1(b) of the Income Security Agreement abolishing the Third Trick Winchester/Hamilton RTC Desk position in the Montreal Operations Centre.

On October 14th, 2003 the Union advanced a grievance stating that the proper notice was not issued and maintains that the article 1.1(b) notice must be rescinded and an article 1.1(a) notice be issued if the Company wishes to abolish a position.

Failing to do this, the Company must make whole all lost wages, including overtime and benefits that would have occurred if the Third Trick Winchester/Hamilton position was still being staffed, as well as subsequent positions that would have been staffed differently if the disputed positions had been maintained.

The Company asserts that the proper notice for this reduction falls under article 1.1(b) of the Income Security Agreement given the circumstances and declined the grievance.

FOR THE UNION: FOR THE COMPANY:

<u>(SGD.) J. RUDDICK</u>	<u>(SGD.) J. J. WORRALL</u>
GENERAL CHAIRMAN	FOR: GENERAL MANAGER - NMC

There appeared on behalf of the Company:

R. Hampel - Manager, Labour Relations, Calgary
A. Azim - Assistant Labour Relations Officer, Calgary
J. BLotsky - Assistant Director, Operations
E. J. MacIsaac - Manager, Labour Relations, Calgary
D. Freeborn - Labour Relations Officer, Calgary

And on behalf of the Union:

J. Ruddick - General Chairperson, Burlington
F. Zanarripa - Local Chairperson

AWARD OF THE ARBITRATOR

The material before the Arbitrator discloses that during a work stoppage the Company was compelled to use managers to handle the rail traffic controllers' desks. That experience caused supervisors to realize that certain efficiencies could be achieved by abolishing the third trick Winchester/Hamilton Subdivision desk, and by redistributing other work. The first abolishment notice issued on October 6, 2003, indicating that the third trick Winchester portion of the desk would be combined with the third trick Montreal West RTC desk and that the third trick Hamilton portion would be combined with the Belleville RTC desk. The following day, on October 7, 2003, a still larger number of adjustments was described in the final notice, which is the subject of this grievance. The broader adjustment of changes is described as follows in that notice:

Co-incident with this abolishment, residual duties from this position will now be combined with the Third Trick Montreal North RTC desk and the Third Trick Hamilton Subdivision portion from this desk will now be combined with the Third Trick Belleville RTC desk.

Co-incident with the above change, the Third Trick Montreal North RTC desk which currently controls the Ste. Agathe, Adirondack, Lachute, Lacolle, Vaudreuil OCS and M&O Subdivision, removed from that particular desk. All other Subdivisions will remain intact.

The Third Trick Montreal West RTC desk which currently controls the Vaudreuil CTC portion of the Subdivision and the Westmount Subdivision will now absorb the Vaudreuil OCS portion of the Subdivision including the M&O Subdivision that was removed from the Third Trick Montreal North RTC desk co-incident with this change.

The Belleville RTC desk currently handles the Winchester Territory from 0645 Saturday until 2200 Sunday. Co-incident with this change, the Winchester Subdivision will be removed from this desk.

The Mactier - Toronto Terminal RTC desk currently controls the Hamilton Subdivision from 0645 Saturday until 2245 Sunday. Co-incident with the above changes, the Hamilton Subdivision will be removed from this desk.

The above changes also requires minor changes to various jobs and these changes are as follows:

The Belleville Swing Job, the Second Trick and Third Trick, plus one shift of the Ontario Swing (from 2245 Monday to 0645 Tuesday) will also be affected co-incident with the above changes.

The Montreal North Swing #1 (3 shifts Saturday 0645 to 1145 and Sunday 0645 to 1145) will also be affected co-incident with the above changes.

The Union maintains that the changes implemented by the Company are, in substantial part, "major". It submits that in the circumstances the Company was obliged to invoke the more substantive protections of notice under article 1.1(a) of the Income Security Agreement which governs technological, operational and organizational changes.

The Arbitrator cannot agree. Firstly, it does not appear disputed that the changes implemented did not involve the loss of any position. Nor was there any significant change in the manner, method, procedure or organizational structure by which the work is carried on. In that regard it is useful to review the definition section of the Income Security Agreement which provides, in part, as follows:

(r) "Technological, Operational and Organizational Changes": means as follows:

...

"Operational or Organizational": a change in the manner, method, procedure or organizational structure by which the employer carries on the work, undertaking or business not directly related to the introduction of equipment or material provided that any such change is not brought about by:

- (i) a permanent decrease in the volume of traffic outside of the control of the Company; or
- (ii) a normal reassignment of duties arising out of the nature of the work in which the employee is engaged; or
- (iii) a normal seasonal staff adjustment.

There is no question in the case at hand of any permanent decrease in the volume of traffic or any seasonal adjustment. In the Arbitrator's view, however, what is eminently clear is that the Company examined the manner in which desk assignments could be distributed, and made a decision which in its view allowed for a redistribution of the work among the existing complement of employees in such a way as to achieve desirable efficiencies. Such an adjustment is not, of itself, an operational or organizational change, and that is so even if it might involve some adjustment in the earnings opportunities of some employees.

By analogy, the adjustments in question are not unlike the reassignment of trains from one home terminal to another, or the decision to abolish a series of shorter trains in favour of establishing one longer train. Such adjustments have long been recognized as being normal reassignments of duties arising out of the nature of the work in which the employees are engaged. (See, generally, **CROA 332, 1167, 1444, 2070, 2893 and 2973.**) The applicable principle, albeit in the context of the material change provisions of running trades collective agreements, is reflected in the following passage from **CROA 2070**:

On a review of the facts it is clear that the Company has found what it considers to be a more efficient means of assigning work to locomotive engineers at Stellarton, with a resulting change in the deployment of persons home stationed at that location. In the Arbitrator's view the Company's right to so reorganize the assignments is not circumscribed by any provision of the Collective Agreement, and the changes which have resulted constitute a reassignment of work at home stations contemplated as an exception within the terms of Article 78.6 of the Collective Agreement. A mere change in assignments does not of itself constitute material change for the purposes of Article 78.1.

For the foregoing reasons the Arbitrator is satisfied that the Union has not discharged the burden, which is upon it, to

demonstrate, on the balance of probabilities, that the Company instituted an operational or organizational change. On the contrary, the adjustments brought into effect following the notice of October 7, 2003 fall well within the recognized concept of normal reassignments of duties, as provided within the exception expressly provided within the definition of operational and organizational change found within the Income Security Agreement. For these reasons the grievance must be dismissed.

September 20, 2004

(sgd.) MICHEL G. PICHER
ARBITRATOR