

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3447**

Heard in Montreal, Wednesday, 15 September 2004

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Abolishment of the Foreman's position held by Mr. D. Gruszczynski at the Surrey Butt Welding Plant.

JOINT STATEMENT OF ISSUE:

In July 2002, the grievor was laid-off temporarily. In September 2002, the Brotherhood received notice that the temporary laid-off was now to be considered permanent. This meant that the foreman's position at the Surrey Butt Welding facility was abolished. No notice was issued pursuant to article 8 of the Job Security Agreement ("JSA") concerning this abolishment. The Brotherhood grieved.

The Union contends that: **(1.)** The Foreman's position existed at the facility ever since it opened; **(2.)** The permanent abolishment of this position constituted a technological, operational and organizational change; **(3.)** The Company's actions were in violation of Article 8.1 of the JSA.

The Union requests that it be declared that the Company's actions were in violation of the JSA and that an article 8 notice should properly have been issued. The Union also requests that the grievor and all other affected employees be made whole for all losses, including maintenance of basic rates, incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's request.

FOR THE UNION: FOR THE COMPANY:

(SGD.) WM. J. BREHL (SGD.) D. FREEBORN

NATIONAL COORDINATOR

FOR: VICE-PRESIDENT, CP RAIL

There appeared on behalf of the Company:

D. Freeborn - Labour Relations Officer, Calgary
E. J. MacIsaac - Manager, Labour Relations, Calgary

And on behalf of the Union:

P. P. Davidson - Counsel, Ottawa
Wm. Brehl - National Coordinator, Ottawa
D. W. Brown - Senior Counsel, Ottawa

AWARD OF THE ARBITRATOR

Upon a close examination of the facts the Arbitrator is compelled to sustain the grievance. The material confirms that for some time the Company made the operational decision to have a working foreman's position in place for its Chemetron Butt Welding and Rail Yard facility in Surrey, British Columbia. The position, entitled "Production and Maintenance Foreman", was similar in its duties and responsibilities to two comparable positions at a second Chemetron Plant which operates in Transcona, Manitoba. In September of 2002 the Company gave notice to the Union that the position was permanently abolished. At issue is whether it was then under an obligation to give notice under article 8.1 of the Job Security Agreement which reads as follows:

8.1 The Company will not put into effect any Technological, Operational or Organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the union concerned to receive such notices. In any event, not less than 120 days' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

The concept of an operational or organizational change is defined in the definitions portion of the Job Security Agreement as follows:

(m) "Technological, Operational or 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.

What the case at hand discloses is the Company's decision to eliminate an entire layer of first line supervision. A prior award of this Office, **CROA 3413**, determined that the decision was taken for *bona fide* business purposes and did not constitute a violation of the work jurisdiction of the Union in light of the overlap between the responsibilities of the foreman and the managerial supervisors of Chemetron.

The real issue in the case at hand is whether the Company can bring itself within one of the exceptions in the defined definition of operational or organizational change produced above, and in particular whether the facts disclose "a normal reassignment of duties arising out of the nature of the work in which the employee is engaged;". The Arbitrator cannot see how that exception can apply in the case at hand. This is not a case, for example, of the relocation of work from one place to another which eliminates the need for a given position or, for another example, an adjustment in employee complement by reason of the abolishment of a train or some other part of the Company's enterprise. In the case at hand there is simply no change whatsoever in the plant or the work it performs, save that the Company has determined that it can do without a first line supervisor in the relatively small operation at Surrey. That is clearly an organizational or operational change, and cannot be fairly be characterized as a normal reassignment of duties inherent in the nature of the work of the production and maintenance foreman, or of the work performed generally within the butt welding plant.

For the foregoing reasons the grievance is allowed. The Arbitrator therefore declares that the abolishment of the grievor's Production and Maintenance Foreman's position did constitute an operational or organizational change for the

purposes of article 8.1 of the Job Security Agreement and that an article 8.1 notice should have been issued. I further direct that the grievor and any other affected employees be made whole for all losses, including maintenance of basic rates, as a result of the Company's violation of the Job Security Agreement. Should the parties be unable to agree on the implementation of the remedy the matter may be spoken to.

September 20, 2004

(sgd.) MICHEL G. PICHER
ARBITRATOR