CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2225

Heard at Montreal, Wednesday, 15 January 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Implementation of trackmobile operation on the car equipment tracks at MacMillan Yard, Toronto.

JOINT STATEMENT OF ISSUE:

Prior to December 10, 1990, all switching in connection with the car repair shop at MacMillan Yard was performed by existing yard crews. Each of these yard crews included a yard foreman and a yard helper. On December 10, 1990, the Company implemented a change in switching operations connected with the car repair shop whereby such switching was thereafter done with a trackmobile operated by car shop personnel who are members of another bargaining unit. There was no reduction in the number of yard crews as a result of this change in switching operations.

The Union contends that the change in question was a material change in working conditions and that, pursuant to Article 79 of Agreement 4.16, the Company was required to serve notice and enter into negotiations on measures to minimize the adverse effects of the material change on the employees affected thereby. Since no such notice was served and no negotiations undertaken, the Company was disallowed from implementing the change.

The Company disagrees with the Union's contentions.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) W. G. SCARROW	(SGD.) M. DELGRECO
GENERAL CHAIRPERSON	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
D. L. Brodie	– Labour Relations Officer, Montreal
N. Dionne	– Labour Relations Officer, Montreal
J. Vaasjo	– Labour Relations Officer, Toronto
R. A. Haggart	– Regional Operations Control Officer, Toronto

And on behalf of the Union:

P. G. Gallagher	– Vice-General Chairman, Fort Erie

AWARD OF THE ARBITRATOR

It is not disputed that several hours of switching work, daily, were removed from the bargaining unit by the Company's action. The issue to be resolved, however, is whether the action can be characterized as a "material change" having "... material adverse effects on employees" within the contemplation of article 79.1 of the collective agreement. It provides, in part, as follows:

> **79.1** The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon the employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with this paragraph.

The material before the Arbitrator discloses that there has been no elimination of regular switching assignments at MacMillan Yard as a result of the Company's action. There is, moreover, no evidence to substantiate any reduction in the number of extra yard assignments which might have been occasioned by the change. At most, it may be argued that there was some marginal reduction in work opportunities available to spareboard employees (although even this is not proved) as a result of the Company's action.

In support of its claim the Union relies, in part, on the prior decisions of this Office in **CROA 271, 286** and **289**. The Arbitrator has difficulty ascribing persuasive value to those cases. In each of them it was found that the abolishment of jobs, or of entire trains, constituted operational changes which were found to be material in their adverse impact on employees. In the instant case it is difficult to find materiality in respect of adverse impact in the same sense.

The spareboard employees at MacMillan Yard can, in the normal course, make no claim to a guarantee of a particular amount of work, although they do have the protection of a minimum wage guarantee pursuant to article 3.4 of the collective agreement. There has, therefore, been no material loss to the employees in that category. Moreover, for the reasons related above, there have been no changes in regular yard assignments attributable to the transfer of the work in question to carmen at MacMillan Yard. In the circumstances, even assuming, without finding, that the Company's action constituted a material change in working conditions within the meaning of article 79.1 of the collective agreement, the Arbitrator cannot find that it is a change which can be said to have had material adverse effects on employees within the bargaining unit. No layoffs, transfers or displacements are shown to have been caused by the change, nor has any employee been required to exercise his or her seniority as a result of having suffered any reduction in work. In these circumstances no violation of article 79 is disclosed.

For the foregoing reasons the grievance must be dismissed.

January 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR