CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3403

Heard in Montreal, Wednesday, 11 February 2004

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Violation of article 56 of agreement 4.16. Implementation of an appropriate remedy consistent with the provisions of article 85, addendum 123 of agreement 4.16.

UNION'S STATEMENT OF ISSUE:

On October 17, 2003, the 308 train crew ordered from Joffre, eastbound to Edmunston, was required to travel westbound of Joffre in order to take charge of the upcoming #308 from Montreal.

It is the Union's position that the Company was in violation of the reasonable intent of paragraph 56.4, article 56 of agreement 4.16, as there were spareboard employees available for such service.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. LEBEL
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. Coleman	– Counsel, Montreal
K. Tobin	– Counsel, Toronto
J. Torchia	– Director, Labour Relations, Edmonton
B. Hogan	– Manager, Labour Relations, Toronto
D. VanCauwenbergh	– Sr. Manager, Human Resources, Winnipeg
D. Fournier	– Division Manager – CMC, Montreal
J. Krawec	– Sr. Manager, Labour Relations, Toronto
O. Lavoie	– Trainmaster, Montreal

D. Parent	– Trainmaster, Montreal
T. Marquis	– General Manager, S.O.D.

And on behalf of the Union:

M. A. Church	– Counsel, Toronto
R. LeBel	– General Chairperson, Quebec
R. A. Beatty	– General Chairperson, Sault Ste. Marie
J. W. Armstrong	– Vice-President, Edmonton
J. Gagné	– Vice-General Chairperson, Quebec
G. Anderson	– Vice-General Chairperson
B. R. Boechler	– General Chairperson, Edmonton
W. G. Scarrow	– Vice-Local Chairperson, Sarnia
G. Dubois	– Local Chairperson
J. P. Paquette	– Local Chairperson
J. Robbins	– Vice-General Chairperson
S. Tapp	– Local President
S. Pommet	– Local Chairperson
R. Dyon	– General Chairman, TCRC, Montreal
P. Vickers	– Vice-General Chairman, TCRC

The preliminary objection filed by the Company prior to the hearing of this dispute was resolved between the parties at the hearing on Wednesday, February 11, 2004. The hearing was therefore adjourned by the Arbitrator to April 2004.

On Tuesday, 13 April 2004, there appeared on behalf of the Company:

K. Tobin	– Counsel, Montreal
J. Coleman	– Counsel, Montreal
J. Torchia	– Director, Labour Relations, Edmonton
B. Hogan	– Manager, Labour Relations, Toronto
D. Van Cauwenbergh	– Sr. Manager, Human Resources, Toronto
J. P. Krawec	– Sr. Manager, Labour Relations, Toronto
T. Marquis	– General Manager, Operations, Toronto
D. Fournier	– Division Manager, CMC
J. Quik	– Manager, COMPORT
F. O'Neill	– Locomotive Repair Centre, Toronto
D. Laurendeau	– Manager, Labour Relations, Montreal

And on behalf of the Union:

M. A. Chuch	– Counsel, Toronto
R. LeBel	– General Chairperson, Quebec
R. A. Beatty	– General Chairperson, Sault Ste. Marie
J. Robbins	– Vice-General Chairperson, Sarnia
W. G. Scarrow	– Vice-Local Chairperson, Sarnia
G. Marcoux	– Local Chairperson, Montreal
W. Namink	– Local Chairperson, Sarnia
G. Ethier	– Secretary, GO-105,
S. Pommet	– Local Chairperson – Yard,
Me. R. Marolais	– Legislative Representative, TUT, Local 1139
Me. S. Groulx	– Observer

AWARD OF THE ARBITRATOR

This case concerns the invoking of article 85 and Addendum 123 of the collective agreement for the assessment of an extraordinary remedy by reason of what the Union claims is the improper assignment of work on train 308 on October 17, 2003. The Union maintains that the Company could not properly order the crew from Joffre eastbound to Edmunston, but first westbound from Joffre to Laurier to collect their train, by ordering them in straightaway service Joffre to Edmunston via Laurier. The Union's position is that the work in question should have been assigned to employees on the Joffre west spareboard as relief work under article 56 of the collective agreement, or as a temporary vacancy under article 49 of the collective agreement.

The Company maintains that it was fully entitled to assign the crew in question in straightaway service, as it did. In that regard it relies on the provisions of the collective agreement, as well as on the prior decisions of this Office in **CROA 362** and **3373**.

The case at hand is not substantially different from that addressed by this Office in **CROA 3406**, heard on the same day. As discussed in that award, the threshold question which the Union must satisfy to invoke the extraordinary provisions of article 85 and Addendum 123 of the collective agreement is whether the actions of the Company constituted a blatant and indefensible violation of the provisions of the collective agreement, as articulated in **CROA 3310**. For the reasons related in **CROA**

3406, I am satisfied that in the case at hand the Union has not discharged the threshold obligation of demonstrating a blatant and indefensible violation of the collective agreement on the part of the Company. At most, what is disclosed is the advancement of two very different *prima facie* positions held in good faith on behalf of the both the employer and the Union, upon the merits of which the Arbitrator makes no comment.

For the foregoing reasons the grievance must be dismissed.

April 20, 2004

(signed) MICHEL G. PICHER
ARBITRATOR