

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN NATIONAL RAILWAYS COMPANY

("the company" / "the employer")

- AND -

NATIONAL AUTOMOBILE, AEROSPACE TRANSPORTATION AND GENERAL

WORKERS UNION OF CANADA (CAW-CANADA), LOCAL 100

("the union")

CONCERNING THE OPERATION OF THE MECHANICAL HEALTH & SAFETY
COMMITTEE AT THE GORDON YARD IN MONCTON, NEW BRUNSWICK

Christopher J. Albertyn - Sole Arbitrator

APPEARANCES

For the union:

Brian McDonagh, National Representative

Bob Bourrier, National Health and Safety Representative, CAW Local 100

For the company:

Ross Bateman, Senior Manager Labour Relations, Toronto

Sam Berrada, Assistant Vice-President, Safety and Occupational Health, Montreal

Robert Bruder, Manager Risk Management, Toronto

Charlie Boyd, Risk Management Officer, Moncton

Hearings held in TORONTO on May 18, 2004.

Award issued on July 5, 2004.

AWARD

This matter arises from the Health & Safety Plan (“the Plan”) between the parties. The union contends that the company has violated Article 1(b) and Article 3(a) and F(i) through (xii) of the Plan. The union further contends that, by acting as it did, the company violated the *Canada Labour Code*, Part II, s. 135 and the regulations, standards, codes of practice, and guidelines formulated under the *Code*.

The conduct complained of is the company’s decision to alter the operation of the Mechanical Health & Safety Committee at its Gordon Yard in Moncton, New Brunswick (“the Committee”), without the agreement of the union. The company has substantially discontinued the Committee, and put in its place an Inter Functional Health & Safety Committee (“the Inter Functional Committee”). The Inter Functional Committee represents management and all functional groups of employees at the location. The union’s Shopcraft group has two representatives assigned to the Inter Functional Committee.

The union says the company cannot unilaterally discontinue the Committee. The company does not dispute it has done so, but contends, among other things, that it is

entitled to do so, and it makes sense, from a health and safety perspective, to have done so.

The company raises a preliminary, timeliness objection to the grievance. The company says the union has failed to progress the dispute within the mandatory time limits contained in the Plan. The timeliness objection by the company is based on the (apparently incorrect) assumption that the last meeting of the Committee was held on February 13, 2003. The union's complaint was filed on February 6, 2004, which (treating February 13, 2003 as the start date) suggests it is significantly out of the time limits prescribed in Article 31 of the Plan.

The union produced Minutes of the Committee's meeting on December 17, 2003. In those Minutes the announcement was made that the Committee would meet once every quarter "instead of the past practice of every month". This announcement ultimately gave rise to the union's complaint.

The union and its Atlantic Region Vice-President, Earl Garland, learnt of the amended Committee meeting schedule on January 13, 2004. He sought a meeting with Norman Gagnon, the employer's Operations Superintendent of the Atlantic Region, at his earliest convenience. They met on January 29, 2004. At the meeting Mr. Gagnon confirmed the Committee would meet quarterly. Mr. Garland advised him the union found this unacceptable and that he would be filing a complaint on the matter. The complaint was filed on February 6, 2004.

Although the change in the meeting schedule of the Committee was announced to the Committee on December 17, 2003, the dispute arose on January 29, 2004. The complaint was filed relatively soon thereafter, and within the time limit of 21 days prescribed in Article 31 of the Plan. In the circumstances the complaint is timely.

The substance of the union's complaint is that, by refusing to hold regular monthly meetings of the Committee, the company has violated its obligations under the Plan and under the *Canada Labour Code*.

The company does not dispute that it has decided that monthly meetings of the Committee are not necessary. This is because it has established the Inter Functional Committee which, it says, more appropriately addresses health and safety issues at Gordon Yard in Moncton.

Article 3 of the Plan concerns Health and Safety Committees. The union relies on Article 3(a), which reads:

The company and the union agree to establish and maintain the local Health and Safety Committees in accordance with the *Canada Labour Code*, Part II, its regulations, standards, codes of practice and guidelines.

The company accepts the union's contention that the Committee was in existence in Moncton when the Plan was signed. The union says that the company is obliged to maintain this committee under Article 3(a).

Article 3(f)(vii) reads as follows:

f. Without limiting the generality of the foregoing, the Committee will:

...

- vii. Hold regular meetings, at least once per month, or more frequently if agreed locally, for the review of:
- (1) reports of current accidents, industrial diseases, and other relevant incidents, their causes and means of prevention,
 - (2) remedial action taken or required by the reports of investigations or inspections, or
 - (3) any other matters pertinent to health and safety as per the *Canada Labour Code* Part II,

...

The union says the provision of the Plan is clear. Unless otherwise agreed, meetings of the Committee must be at least monthly. The union also relies upon the provisions of s. 135 of the *Canada Labour Code* Part II, which concern the establishment and functioning of health and safety committees, and the provisions of s. 135.1 of the *Code*, which describe the appointment of members to health and safety committees. Health and safety committees must meet at least nine times a year under the *Code*.

The union relies also on a document concluded on June 29, 1997, entitled “Terms of reference for Inter-Functional Safety & Health Committees involving Mechanical Department Safety & Health Committees”. The pertinent portions of the document are the following:

Workplace Mechanical Department Safety and Health Committee: will be recognized as the official legislative committee with the full powers of Part II of the *Canada Labour Code* and the prescribed regulations, as well as the “Regulations For The Safety and Health Committees And Representatives”.

Inter-Functional Safety and Health Committee: Committee comprised of representatives from the various functions working in a given area, which may be in addition to the Workplace Mechanical Department Safety and Health Committee. That Committee’s mandate is to support the Workplace Mechanical Department Safety and Health Committee(s) on matters which may impact more than one Function in a given area.

The Inter-Functional Safety and Health Committee(s) will not exercise any powers or be an authority over the Workplace Mechanical Department Safety and Health Committee(s).

Any modifications to these Terms of Reference will be done through the Workplace Mechanical Department Master Joint Health and Safety Committee.

In the union’s submission, the Inter Functional Committee was created to compliment, or supplement, the Committee, not to replace it. As between the two committees, the Committee has primacy over the Inter Functional Committee and the terms of reference of the Committee cannot be altered without the joint agreement of the parties.

The company disputes the union's reliance on the Terms of Reference for Inter-Functional Safety & Health Committees involving Mechanical Department Safety & Health Committees. It says that document was novated (superseded and effectively cancelled) by the Plan. It argues that agreements and understandings concerning health and safety which existed prior to the conclusion of the Plan and which were not expressly incorporated into the Plan, have ceased to be effective.

The company maintains that health and safety committees have been restructured over the past several years to better reflect its current organization, as well as to expedite communication and decision-making. The company has discontinued "function specific" health and safety committees, in favour of inter functional committees. The company says the change has been occasioned by shop consolidations and rationalization initiatives. It claims that a separate Mechanical health and safety committee in Moncton was appropriate when there were some two hundred Shopcraft employees, several years ago. However the Mechanical workforce complement is now just 42 employees, and a separate health and safety committee is not necessary. The Inter Functional Committee more coherently addresses any health and safety issues affecting Shopcraft and other employees at the Gordon Yard in Moncton. The company contends that the Shopcraft employees are

entitled to one representative on the Inter Functional Committee under Part II of the *Canada Labour Code*, but they have two representatives. The company suggests that, by exceeding its obligations with respect to health and safety representation by the union, it is not in violation of the Plan or the *Code*. The company argues the Committee was an extra committee, not specifically required under the Plan or the *Code*, and that therefore it has no contractual obligation to maintain the Committee. It therefore denies any breach of the Plan or the *Code*.

An inter-functional committee may well more effectively and consistently address health and safety at the Gordon Yard. But that is not my inquiry. My inquiry is whether the company has breach the Plan and/or the *Canada Labour Code*. The company says it complies with the Plan and the *Code* because the Inter Functional Committee performs the function, and meets with the frequency, the Committee once did. The union says the company cannot unilaterally make this substitution.

The structures established in the Plan are joint structures. They cannot be unilaterally dispensed with. The “local Health and Safety Committee” referred to in Article 3(a) of the Plan is the Mechanical Health & Safety Committee, not the Inter Functional

Committee. The company is not authorized under the Plan to make a unilateral substitution of the Committee, as it has purported to do. It is obliged under Article 3(vii) to hold meetings of the Committee at least once per month.

In the result, I find the company has breached the Plan by declaring that the Committee will meet less frequently than monthly, without the union's agreement. Given this conclusion, it is not necessary for me to consider the application of the *Canada Labour Code* to this complaint. The company is directed to restore the monthly meetings of the Committee until such time as the parties agree to vary this practice.

Dated at Toronto on July 5, 2004.



Christopher J. Albertyn

Adjudicator