CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 90

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Brotherhood that all trackmen employed in extra gangs in Montreal Terminals be compensated under Wage Agreement No. 14.

JOINT STATEMENT OF ISSUE:

A Claim was advanced on April 30th, 1964 by the Brotherhood that laid off sectionmen employed on a temporary extra gang working in Glen Yards (Montreal) should be paid at sectionmen's rates of pay. In the further handling of this matter, the claim was extended by the Brotherhood to provide that all Sectionmen employed in extra gangs be paid at Sectionmen's rate of pay. The Company declined these claims on the basis that extra gang labourers work under the provisions and rates of pay of Wage Agreement No. 13.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) W. M. THOMPSON SYSTEM FEDERATION GENERAL CHAIRMAN	(Sgd.) A. M. HAND GENERAL MANAGER ATLANTIC REGION

There appeared on behalf of the Company:

R Colosimo	Supervisor Personnel & Labour Rel's., CPR Montreal
J. D. Jardine	Assistant Engineer (A.R.), C.P.R., Montreal

And on behalf of the Brotherhood:

W. M. Thompson	System Federation General Chairman, B.M.W.E., Ottawa
J. A. Huneault	Vice-President, B.M.W.E., Ottawa
A. Passaretti	General Chairman, B.M.W.E., Montreal
L. DiMassimo	Local Chairman, B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

There are two agreements covering the Maintenance of Way Employees entered into between this Brotherhood and the Railway Association of Canada, of which the Canadian Pacific is a member.

One Agreement is numbered 14. It covers maintenance of way employee working in the Track and Bridge and Building Departments, for whom rates of pay are provided by schedule, as well as labourers in extra gangs "unless those engaged practically the year around, who are not to be considered as coming under the schedule."

The second Agreement is numbered 13 and it covers "Extra Gang Labourers" who are defined as "employees working in temporary extra gangs", for whom rates of pay are provided in their agreement.

The Joint Statement of Issue describes a claim made by the Brotherhood on April 30 concerning fifteen sectionmen who had been covered by Agreement 14. but who were laid off and then became members of a temporary gang working in Glen Yards (Montreal).

In addition, the claim asked that all sectionmen employed in extra gangs be paid at sectionmen's rate of pay.

The grievors were laid off because of a reduction in staff. It was said they were then given preference of employment in order of seniority in the extra gang. This was in accordance with the first paragraph of Section 4, Clause 9 (a) of Wage Agreement No. 14, reading:

> "A sectionman who has been laid off on account of reduction of staff and who is unable to exercise displacement rights in accordance with Clause 4 of this Section 4 shall have preference of employment in order of seniority in any extra gangs."

A very lengthy presentation was made by the Brotherhood, telling the history of the creation of Wage Agreement No. 13 in 1953. It was also claimed that the wages and working conditions established by Wage Agreement No. 13 were "grossly inadequate, unfair and unjust". It was stated that all efforts by the employees since Wage Agreement No. 13 came into effect to improve the wages and working conditions of employees covered by it or to have temporary extra gang labourers placed under the coverage of Wage Agreement No. 14 has been "bitterly resisted by the railways".

In Montreal Terminals it was said there are three Trackmen's seniority lists - an "A" Sectionmen's List, a "A" Sectionmen's List and an Extra Gang Seniority List. The "A" category covers those sectionmen who, in the exercise of their seniority, have been assigned to vacancies' or new positions regarded at the time as providing full time work. The "B" sectionmen are those who, in the exercise of their seniority have not been assigned to Class "A" positions or in other words, are of a seasonal nature. These two lists were said to conform with Section 3, Clause 2 (c) of Wage Agreement No. 14.

It was claimed by the Brotherhood the railway is "trying to take advantage of the skill and training of Class "B" sectionmen by abolishing their jobs and recruiting them in so-called extra gangs

and subjecting them to the considerably lower wage rates and wholly inferior working conditions of Wage Agreement No. 13".

Basic in the complaint made by the Brotherhood is this portion of their presentation:

> "Since the end of World War II, the use of machines to perform all types of track work formerly done with hand tools or hand-held power tools has completely revolutionized track maintenance procedures The old-time 'labour' gang as we once knew it in the maintenance of way department has become obsolete. It has been replaced by highly- mechanized gangs. At the same time, the trend has been to reduce the size and number of section gangs and to complement their work with that of mechanized gangs working over a certain territory".

In sunmary the Brotherhood claimed that the laid off sectionmen employed in extra gangs in Montreal Terminals should be paid Sectionmen's rate of pay based on the following:

1. These are not the type of employees excluded from Wage Agreement No. 14 by Section 1, Clause 2, or contemplated to be covered by Wage Agreement No. 13;

2. These are not the type of "large temporary extra gangs" contemplated by Section 4, Clause 9 (b) of Wage Agreement No. 14;

3. That even if these are extra gangs, they are being used in violation of Section 4, Clause 9 (c) of Wage Agreement No.14;

4. That these gangs are covered by Wage Agreement No. 14;

5. That the establishment of these gangs and similar gangs should be a matter of negotiation under Section 18 of Wage Agreement No. 14.

The Company's submission dealt specifically with the claim outlined in the Joint Statement of Issue and stated that a temporary extra gang was established for the purpose of changing rails, relifting temporary diversions, ballasting, removing rubbish from tracks' and snow removal. This gang was said to have consisted of some laid off "B" Sectionmen who had exercised their seniority under Section 4, Clause 9 (a) of Wage Agreement No. 14.

Clause 9 (b) reads;

> "Section rates of pay shall not apply on large temporary extra gangs employed in ballasting and lifting track where new material has been distributed continuously along the line, relaying rail out of face, lining and other work incidental to such ballasting and relaying rail, or in other work too heavy for regular section gangs to perform".

It was claimed it was never contended by the Company that the particular extra gang in question was a "large temporary extra gang"

as contemplate in that provision.

It was submitted that Section 1 of Wage Agreement No. 13 defines extra gang labourers as employees "working in temporary extra gangs, for whom rates of pay are provided in this agreement .." That definition, it was claimed, is clearly not limited to large temporary extra gangs.

It was further claimed that in establishing this extra gang, which these particular grievors joined when laid off, there was no violation of clause 9 (c) of Wage Agreement No. 14, because this extra gang did not take the place of the regular section gang.

It was stated that the men concerned had worked on temporary extra gangs in December, 1963, and were employed on section gangs early in 1964, replacing regular sectionmen assigned as Machine Operators. When the regular sectionmen returned to the section gangs, they displaced the relief men, the latter then being set up in the extra gang.

In summary the representative for the Company contended that inasmuch as it had been shown the employees in question were in fact employed as extra gang labourers, there is no justification for paying such employees under Wage Agreement No. 14.

It is to be noted there are no job descriptions in either of these tw greements, beyond that outlined in Clause 9 (b) of Agreement No. 1?, describin he work of large temporary extra gangs?

There has been no claim submitted on behalf of the fifteen employees ?volved in this claim that they were laid off improperly as sectionmen. This ?ing so, the Company apparently had the right to reduce their staff.

It is also clear that these men then exercised their seniority rights as provided in the first paragraph of Section 4, Clause 9 (a) of Wage Agreement No. 14 to join an extra gang then in existence.

In order for this claim to succeed it would be necessary to establish that while working under Agreement No. 13, the 15 employees were actually performing the work of sectionmen covered by Agreement No. 14. It is as simple as that.

This in my opinion, has not been established.

Whether or not those in extra gangs should be covered by Agreement No. 14 remains a matter for future negotiation. This cannot be obtained by arbitration.

For these reasons this claim is denied.

J. A. HANRAHAN
ARBITRATOR