CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 110

Heard at Montreal, Tuesday, June 11th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (EASTERN REGION)

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims submitted by Yardmen at Trenton, Ontario, when not called to fill temporary vacancies.

JOINT STATEMENT OF ISSUE:

By agreement between the parties all yard crews at Trenton, Ontario, were designated as reducible crews effective January 15th, 1968. As of January 22nd, 1968, none of the three reducible crews had been reduced. On seven (7) occasions between January 18th and January 22nd the regular yardmen were not available to work their assigned positions and on tbese occasions the crews of which they were a member were operated with a yard foreman and one helper. Yardmen R. J. Couture, B. N. Graham, H. J. Caskin, J. F. Little, W. M. Foshay, J. Finlan and D. Helyer submitted claims for eight hours each at the penalty overtime rate due to their not being called to fill the position of second helper. The claims were declined by thc Company. The Brotherhood of Railroad Trainmen alleges that the Company by not filling the vacancies and declining these claims has violated the provisions of Article 42 Rule 8, Clauses (a), (j) (l) and (k) of the Collective Agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. I. HARRIS	(Sgd) W. J. PRESLEY
GENERAL CHAIRMAN	GENERAL MANAGER (EASTERN REGION)

There appeared on behalf of the Company:

J. Ramage, Manager Labour Relations, C.P.R., Montreal
C. F. Parkinson, Labour Relations Assistant, C. P. R., Montreal
J. G. Dow, Supervisor Personnel ? Labour Relations, C.P.R., Toronto

And on behalf of the Brotherhood:

J. I Harris, General Chairman, B. R. T., Montreal
G. W. McDevitt, Vice-President, B. R. T., Ottawa

AWARD OF THE ARBITRATOR

Pursuant to an agreement entered into between the parties on January 15, 1968, three yard crews in Trenton, Ontario, were designated "reducible crews", meaning that each crew could consist of only one yard foreman and one yard helper.

As of that date, January 15, 1968, there was a foreman with two helpers assigned to each of the three "reducible" yard crews at Trenton. The second helper had a seniority date prior to December 15, 1968, and therefore under Clause (g) of the agreement became a "protected" yardman. That provision reads:

> "For the purpose of this article, a yardman with a seniority date on or prior to December 15, 1966, shall be known and designated as a 'protected' yardman."

On seven occasions between January 18 and January 22nd, as outlined in the claims of the claimants, a regularly assigned yardman who had claimed a helper's position on one of these "reducible crews" was off sick. On each occasion that helper's position was not filled but was temporarily manned by a foreman and one helper.

The seven claimants stated that on each of the days claimed for they were at rest and available for such duty.

The representative for the Brotherhood based their principal argument on the wording of Article 42, Rule 8, Clause (a) that specifies certain yards in which a yard crew shall consist of not less than a foreman and one helper. Trenton was not included in that original list. The final paragraph of that clause provides:

> "In all other yards a yard crew shall consist of not less than a foreman and two helpers except as provided hereunder. Yardmen will not be required to work with less than a full crew as specified."

The applicable exceptions to that provision were said by the Brotherhood to be contained in Article 42, Rule 8, Clauses J (l) and (k).

> "Clause J (1)
>
> One helper position in a reducible crew may be discontinued for each 'protected' yardman entitled to a regular position who is removed from the active working list of yard foremen or yard helpers other than by lay-off, discharge, or temporary promotion to yardmaster or non-schcduled position and for eacb 'non-protected' yardman on a regular assignment or who has sufficient to hold such an assignment."
>
> "Clause (K) reads:
>
> When a regular assignment which has been posted as a 'reducible crew' but which has not actually been reduced is bulletined and no applications are received from a 'protected' yardman for a

helper position in that crew such position need not be filled until claimed by a 'protected' yardman who bas been absent for five days or more during the period the assignment was under bulletin. Such position shall again be bulletined at the next change of time table and the same conditions apply."

The main thrust of the Brotherhood's submission was that it was only when an assignment has been reduced according to either of those two provision that the Company could compel a crew to work with less than the foreman and two helpers in Trenton Yard.

In other words, it was submitted that under Article 42, Clause J (1) the temporary absence for his own reasons of one of the helpers on the dates in question did not indicate the discontinuance of that position. Further, that under Clause (K) a set of circumstances other than existed on the dates in question is contemplated. In other words, no special bulletin had been advertised by which applications were invited from a "protected" yardman.

For the Company it was submitted that immediately it has been determined, as in this case by agreement, that a crew consist can be reduced, the second helper position on that crew is recognized as a helper position that is not required; that it is a redundant position. It was admitted however, that under the protective provisions of the agreement a "protected" yardman has the right to fill such redundart position on a "reducible that has not been reduced under the provisions of Clause J (1).

The representative for the Company interpreted Clause (K) as providing in part that if a regular assignment has been posted as a "reducible crew" and the redundant helper's position is not claimed by a "protected" yardman, such position need not be filled.

Clause (f) provides:

"At a yard where there are 'reducible crews', an up-to-date list of such crews shall be posted, copies of which will be supplied to the Local and General Chairman."

It was stated that pursuant to that requirement a posting had been made designating all three crews in the Trenton Yard as "reducible crews".

The essence of the claim made by the Company was that when a yard or transfer crew has been determined to be "reducible", the redundant helper position in that crew need not be filled unless such position is claimed by a "protected" yardman and further that when this occurs it shall be filled only by the claimant. Should that claimant be absent for a temporary period, it was submitted for the Company that no other yardman has any right to that position. Again it was stressed that should the "protected" yardman filling the redundant position of second helper be off such pcsition temporarily, there is no requirement that the redundant position be filled during his absence. Particularly was it emphasized that the provisions of Clause (K) do not bestow upon any other yardman the right to fill such redundant position.

It was further submitted for the Company that to suggest the filling of redundant positions by men who had already earned their pay on their regular jobs and by reason of which could only fill the redundant job at the overtime rate of time and one-half was beyond comprehension.

A study of the Memorandum of Agreement in question shows that in Clause (a) the parties agreed that in twelve specified yards a yard crew shall consist of not less than a foreman and one helper.

The third paragraph of that clause is of determining importance.

It reads:

> "In all other yards a yard crew shall consist of not less than a foreman and two helpers except as provided hereunder. Yardmen will not be required to work with less than a full crew as specified".

The words "except as provided hereunder" warrant special consideration as they are of controlling importance. The first qualifying provision is contained in Clause (b). It commences,

> "Should the Company desire to abolish one helper position in any yard or transfer crew on which two helpers are employed in accordance with Clause (a) hereof, the Company shall notify the Local and General Chairman of the Brotherhood in writing of its desire to meet with respect to reaching agreement on a crew consist of one yard foreman and one yard helper..."

There then follow three subsections outlining how this may be done, either by agreement or by reference of the dispute to the Canadian Railway Office of Arbitration for determination.

Subsection (e) of this Clause provides:

> "Where it has been determined by agreement or arbitration that a crew consist can be reduced such crew shall thereafter be a 'reducible crew'."

In other words, it then becomes one of those outlined in the original list of yards described in Clause (a).

On January 15, 1968, the parties to this agreement met and agreed that a crew consist in respect of each of the three yard crews employed at Trenton should be one consisting of a foreman and one yard helper. In accordance with that decision a bulletin was posted designating all three crews as reducible crews.

Once that action was taken, the final paragraph of Clause (a), relied upon in this application, had no bearing upon the Trenton Yard. It was a yard that joined those in the original list shown in Clause (a) and no longer came within the term "In all other yards a yard crew shall consist...".

It follows, therefore, that the only employees who could claim the right to work in a redundant helper position would be a protected

yardman who claimed such right.

In other words, the determination that a crew has become reducible means that the second helper position on that crew is recognized as a helper position that is not required.

It was stated for the Company that under the protective provisions of this agreement a protected yardman has a right to fill such a redundant position on a reducible crew that has not been reduced under the provision contained in Clause J (1).

I can find nothing in the agreement, however, providing that when such redundant position has been claimed by a protected yardman who is temporarily off such assignment that the redundant position may be filled during his absence. It reverts temporarily to its declared status, namely, a yard that may be operated with a foreman and one helper.

Clause (i) provides that redundant positions that have been discontinued may only then be filled by protected yardmen who are seeking work by reason of their regular assignments being abolished. This, as argued for the Company, would mean that the claimants in this dispute would have to justify their claims on the basis that they were seeking work due to the abolishment of their regular assignments, which, of course, was not the case.

It is clear that the intent of the parties in qualifying the general purpose of this agreement, whereby a yard is classified as containing reducible crews, was to protect the livelihood or long-service employees even though employed temporarily in redundant positions. The avenue of entry for such a benefit, however, is limited to the provisions outlined in subsections (g) to (n) of this agreement, none of which, in my opinion, deal with the filling of a temporary absence of one who has claimed such a right.

Of pivotal importance to these claims, on the basis submitted, however is the fact that this yard, having been added to the list of yards specifically outlined in Clause (a), by reason of the action of the parties described, the final paragraph of that clause no longer applies to it. It would therefore be necessary for these claimants to bring themselves within one of the provisions outlined in subsections (g) to (n) of the memorandum of agreement. This, I am satisfied they have not done.

For these reasons these claims must be denied.

J. A. HANRAHAN
ARBITRATOR