CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 241

Heard at Montreal, Wednesday, October 14th, 1970

Concerning

CANADIAN PACIFIC RAILMAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Concerning the proper interpretation of Clause 4 (d) of the Memorandum of Agreement between the Railway Association of Canada and the Brotherhood of Maintenance of Way Employees signed July 22, 1969.

JOINT STATEMENT OF ISSUE:

Section 4 (d) of this Memorandum of Agreement reads as follows:

> 4(d) Following the implementation of the two yard classifications on any Region in accordance with paragraphs 2 and 3 above any subsequent changes affecting the number of points of any yard section will be dealt with on the basis of such criteria in accordance with the principles set out in paragraphs 4(a), 4(d) and 4(c).

The Brotherhood contends that Section 4(d) applies in respect of line sections as well as yard sections.

The Company contends that Section 4(d) only applies in respect of yard sections.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. D. ROBERTSON	(SGD.) R. T. RILEY
SYSTEM FEDERATION GENERAL CHAIRMAN	REGIONAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

J. A. McGuire	Monager Labour Relations, CPR, Montreal
D. Cardi	Labour Relations Officer, CPR, ''
E. Cameron	Labour Relations Officer, CPR,
J. Fox	Engineer of Track, CPR, ''
K. A. Truman	Regional Engineer, CPR, Vancouver
J. G. Benedetti	Supervisor Labour Relations, CPR, Vancouver

And on behalf of the Brotherhood:

G. D. Robertson	System Federation General Chairman, BMWE, Ottawa
W. M. Thompson	Vice President, B.M.W.E., Ottawa
F. W. Borsa	Federation General Chairman, B.M.W.E., Winnipeg
A. Passaretti	General Chairman, B.M.W.E., Montreal
H. J. Thiessen	General Chairman, B.M.W.E., Calgary

AWARD OF THE ARBITRATOR

By a memorandum of agreement between the parties dated July 22 1969, it was agreed that the existing four designations of 1st, 2nd, 3rd and 4th Class Yard sections would be reduced to two designations of lst and 2nd Class Yard sections, and that the existing yard sections would be reclassified in accordance with certain criteria. Under the criteria set out in the agreement, point values were assigned with respect to various features of the sections to be classified. Those for which 8 points or more were established were to become 1st Class sections, those for which from 4 to 7.99 points were established were to be 2nd Class sections, and those with under 4 points were reduced to "line" sections. There had been, and continued to be sections to be reduce "line" sections, but it is to be noted that these were not among those to be reclassified with the agreement. Implementation of the two-yard classification in accordance with the agreement would not affect "line" sections, whatever the application of the criteria for reclassification might have led to. Of the existing 1st, 2nd, 3rd and 4th Class sections, however, some could have become "line" sections by reason of the application of the criteria. The reclassification, that is, applied to existing 1st, 2nd, 3rd and 4th Class sections only. It may have been that there were at the time of reclassification certain "line" sections which, had the criteria been applied to them, would have been reclassified as 1st or 2nd Class sections under the new scheme. Following the classification, further changes could occur, and both among the pre-existing "line" sections, and the "line" sections which had become such by reclassification, there could be a number of sections which would become 1st or 2nd Class sections if the criteria were to be applied.

Rates of pay for Section Foremen, Assistant Section Foremen and Sectionmen are related to the classification of the section on which the individual works. Clearly, an inequitable result may arise where an employee works on a "line" section which, if the criteria were applied, would become a 1st or 2nd Class section.

The matter of subsequent changes is dealt with in section 4 (d) of the memorandum of agreement, set out in the Joint Statement of Issue. The union relies on this provision in support of its claim that "line" sections ought to be re-evaluated and classified in accordance with the criteria.

In the course of reclassification, certain sections which had been 1st, 2nd, 3rd or 4th Class sections became "line" sections. If subsequent changes occurred on those sections, they should be re-evaluated in the light of the criteria. That at least appears

from section 4 (d). The issue in this case is whether the pre-existing "line" sections, which continued as such following the reclassification and which indeed were not affected by it, are subject to reclassification in the event of subsequent change.

It has been noted that the existence of "line" sections whose features would appear to call for a higher classification according to the criteria is anomalous, and seems inequitable. Whether this is so is not the issue before me, although such circumstances may be borne in mind in construing the provisions of the agreement. It must also be noted, however, that this anomaly is contained in the agreement itself which did not call for the reclassification of the "line" sections existing at the time the agreement was made. If the union's argument were to succeed, it would mean that the scope of section 4 (d) was broader than that of the rest of the agreement, and provided for reclassification of pre-existing "line" sections in the event of subsequent changes, when the section had not dealt with their classification in the first place. The provision was for the reclassification of the "present yard sections" and it is those sections which are subject to re-evaluation in the event of subsequent changes.

The company's contention is that the agreement dealt only with the classification of "present yard sections", and while some of these might become "line" sections as a result of reclassification, the existing "line" sections were not subject to the agreement.

The grievances request that "the same criteria" as are to be applied to yard sections under the agreement be applied "to all sections which have not been evaluated" on the Kootenay and Edmonton Divisions. This goes beyond the requirements of the agreement. The agreement calls for the application of the criteria there established to yard sections. It did not deal, except incidentally, with line sections. There was no requirement for the evaluation of line sections. Whether the agreement thus perpetuated an unfair inequality or not is a matter as to which I express no opinion. The decisive point is that this was the expressed agreement of the parties - to reclassify yard sections - and it is that agreement by which I am bound.

Accordingly, the grievances must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR