CANADIAN RAILWAY OFFICE OF ARBITRATION

Case NO. 266

Heard at Montreal, Wednesday, Feb. 10, 1971

concerning

CP RAIL (Prairie Region)

and

UNITED TRANSPORTATION (T)

DISPUTE:

Failure to agree on a yard crew consisting of one Foreman and one Helper on the 1600 Yard Assignment - Job 2L8 - at Winnipeg.

JOINT STATEMENT OF ISSUE:

Article 9, Clauses (b), (c) and (d) of the Yard Agreement, reads:

(b) Should the Company desire to abolish one helper position 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 Union in writing of its desire to meet with respect to reaching agreement on a crew consist of one yard foreman and one yard helper. The time and place, which shall be on the Region concerned, for the Company and Union Representatives to meet shall be agreed upon within twenty-one calendar days from the date of such notice and the parties shall meet within thrity calendar days of the date of such notice. It is understood, however, that if the number of cases to be handled at any particular time make the time limits specified herein impractical, on request of either party, the parties shall mutually agree on a practical extension of such limits.

(c) The determination of whether or not the proposed crew consist reduction shall be made will be limited to and based on maintenance of adequate safety. If the parties do not reach agreement at the meeting referred to in Clause (b) the Company may, by so advising the Local and General Chairman in writing, commence a survey period of five consecutive working days for the yard operations concerned during which Union Representatives may observe such operations. The survey period shall commence not less than ten and not more than twenty calendar days from the date of the Company's advice with respect to the survey period. The Local and General Chairman shall be advised of the result of the survey.

(d) If after completion of the survey period the union

Representatives oppose the implementation of a two-man crew, such representatives will identify the specific moves which cannot, in their opinion, be performed safely with two men and the reasons therefor. If agreement cannot be reached by parties on the proposed crew consist reduction, the General manager may by so advising the General Chairman in writing, refer the dispute to the Canadian Railway Office of Arbitration for determination.

Notice was served upon the Local and General Chairman of the United Transportation Union (T) by the Company, of its desire to implement a two-man yard crew on the 1600 Yard Assignment - Job 2L8 - at Winnipeg. A meeting was held on October 2nd, 1969, between the Superintendent for the Company and the Local Chairman for the Union, at which no agreement was reached on the proposed crew consist reduction. The Company then served notice on the Union that a survey period of five consecutive working days, October 31st to November 4th, 1969, inclusive, would be conducted. This was done with the Local Chairman observing the operation on behalf of the Union.

The results of the survey, accompanied by supporting survey data, were provided to the Local and General Chairman, with the Company contention that the data supported its view that adequate safety, stipulated in Clause (c) as the determining factor in establishing a crew consist reduction, could be maintained on the assignment - Job 2L8 - with a crew consist of one Yard Foreman and on Yard Helper.

Union representatives have opposed the Company's request for implementation of a two-man crew on this assignment and in support of their position on request by the Company, have identified specific moves which cannot, in their opinion, be performed safely with a two-man crew on the following tracks:

East End of S. W. yard, Scale Track 'P' and

Shed Lead, House Tracks, CPMS I-9, I-18,

Midland Transfer, L-110, L-104, West End

of S. W. Yard.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. T. O'BRIEN GENERAL CHAIRMAN	(SGD.) W. J. PRESLEY REGIONAL MANAGER, OPERATION AND MAINTENANCE. (Prairie)

There appeared on behalf of the Company:

P. A. Maltby	- Supervisor labour Relations, C.P.R. Winnipeg
F. B. Reynolds	- Asst. Supervisor Labour Relations, C.P.R. Winnipeg
R. B. Bremner	- Special Duties, C.P.R. Winnipeg
N. Des Brisay	- Analyst, C.P.R. Winnipeg
D. D. Wilson	- Labour Relations Officer, C.P.R. Montreal

And on behalf of the Brotherhood:

R. T. O'Brien - General Chairman, U.T.U.(T), Calgary

AWARD OF THE ARBITRATOR

The company seeks the reduction of the three-man crew heretofore used on the assignment in question, to a two-man crew. A reduced crew is permissible where the reduction can be made with maintenance of adequate safety. As the collective agreement now provides where the union does not agree that a crew is reducible, it must specify specific moves which in its opinion, cannot be performed safely by two men. The matter is then to be determined having regard particularly to these specific moves.

In the instant case, the assignment on which the crew is sought to be reduced is Job 2L8, at Winnipeg. This assignment is in some respects the counterpart of assignment IL8, which was the subject of Case No. 223, in which it was held that the work could be performed safely by a reduced crew. There are, however, differences between the two assignments, and the tracks referred to in the Joint statement of issue are not, with the exception of "1" lead, the tracks referred to in the earlier case. In some respects, the work of Job 2L8 is more difficult, in that it is performed in the late afternoon and in the evening, also spends a more substantial portion of its time on unprogrammed work. On the other hand, it is predominantly involved in pulling cars from industrial tracks, rather then placing them, and this movement is in some respects a simpler one. From a study of the survey, however, it is apparent that the work performed by the crew of this assignment is substantially similar to that performed on Job lL8, and what was said in the Award in Case No. 223 with respect to that assignment applies generally here. It is not necessary to describe in detail the particular situation in which changes in switching methods or limitations on the number of cars handled would be necessary if the work were to be performed safely. I think it is sufficient to say, from a study of all the material before me, that the work could be performed by a two-man crew with maintenance of adequate safety.

It would appear from the position set out by the union in its correspondence with the company on this matter, and from the representations made at the hearing, that one of its major concerns is the establishment in this case, as in the case of Job lL8, of "guidelines" governing the reduction of crew size. In that case, it was said of the several specific instances dealt with that the work could be performed safely by a reduced crew provided certain things were done, for example that no more than a certain number of cars were handled at one time at a particular location, that adjoining trackage be cleared to maintain sight lines;that the engine face a particular direction; and the like. These provisos or guidelines were relied on as establishIng that it was indeed possible for the work to be performed safely by a reduced crew. They do not, however, constitute absolute requirements which the company is obliged to

meet: the arbitrator has no jurisdiction to impose such requirements. The question before the arbitrator is whether it is possible for a reduced crew to do the work. I have indicated in a general way in other awards that the question is, in effect, Whether it is a reasonably practical matter for a two-man crew to perform the assignment. If, by making the sorts of changes, or following the sorts of "guidelines" that have been referred to, it appears that the work can be done by a two-man crew then it must be concluded that the crew is reducible. But the actual performance of any particular operation is the job of the crew itself, under the direction of its foreman, subject to the overriding directions of management. Thus, there are some operations on the assignment in question that could not be carried out in some situations even by a three-man crew: in a dense fog, for example. The only absolute requirements are those of the general operating rules, and these must be observed at all times, regardless of crew size, and regardless of their impact on productivity.

Subject to the foregoing, it may be said that the "guidelines" referred to in Case No. 223 would apply generally in this case: in a number of specific instances the company has indicated that changes in switching methods, limitations on numbers of cars handled or the like would make it possible for the work to be performed by a reduced crew. These "guidelines" are not directives, but are really recitals of the considerations on which the issues have been determined. They are not immutable, but would of course give way to better methods of switching, or different limitations on the number of cars handled, reflecting a better analysis of the situation, or changes in equipment.

Two aspects of the work of Job 2L8 are distinct from those considered in Case No. 223. These are switching in South-West Yard, and the transfer movement to the Midland Railway. There is no doubt that the three-man crew was occupied with this work during the survey, but changes in operations would make it possible for the work to be done by two men. In the case of switching in the South-West Yard, this may involve a change not only in the positioning of the crew, but also in the nature of the movement, as it may be necessary, as the union suggests, to push rather than kick cars into the appropriate tracks. In the case of the Midland transfer, arrangements have been made to provide the assistance of a Midland Railway crew, or access to Midland Railway track, so that excess cars can be set over onto the West end of their delivery track, thus permitting the reduced crew to handle a train of restricted length. In any event, it appears that these tasks, like others, can be safely performed by a reduced crew, provided that the necessary conditions are met.

For the foregoing reasons, it is my conclusion that the work in question can be performed safely with a reduced crew. It is accordingly my award that the request of the Company be granted.

J. F. W. WEATHERILL
ARBITRATOR