CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 277

Heard at Montreal, Wednesday, April 14, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PRAIRIE REGION)

and

UNITED TRANSPORTATION UNION

EXPARTE

DISPUTE:

Failure to agree on a yard crew consisting of one Forenan and one Helper on the 0700 Yard Assignment - Job ILII - at Winnipeg.

COMPANY 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 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 Gcneral Chairman of the Union in writing of its desire to meet with respect to reaching agreement on a yard 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 thirty 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 the request of either party, the parties shall mutually agree on a practical extension of such time 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 results 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 the 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 crew on the 0700 Yard Assignment - Job ILIII - at Winnipeg. A meeting was held on November 10th, 1969, between the Assistant Superintendent for the Company and 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 days, February 16th to February 20th, 1970 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 data were provided to the Local and General Chairman, on November 3rd and 4th respectively with the Company contention that the data supported its view that adquate safety, stipulated in Clause (c) as the determining factor in establishing a crew consist reduction, could be maintained on the assignment - Job ILII - with a crew consist of one yard foreman and one yard helper.

Union Representatives have opposed the Company's request for implementations of a two-man crew on this assignment, but in support of their position, on request by the Company, have failed to identify any specific moves which cannot, in their opinion, be performed safely with a two-man crew. Alternatley the Union requested the Company to give consideration to re-survey of the assignment on the grounds that this assignment is not working under conditions existing when survey was made and performing work which was not performed during the survey period. The Company does not agree with this Union contention and has declined to make a further survey. The Company does not agree with this Union contention and has declined to make a further survey. The Company's submission will clearly point out that the basic work required of the assignment has not significantly changed from that which obtained during the survey period. While the Union was repeatedly requested to outline specific moves which in its view could not be performed by two men with adequate safety as required by Clause (d) of Article 9, it has declined to do so.

FOR THE COMPANY:

(SGD.) W. J. PRESLEY

REGIONAL MANAGER, OPERATION
AND MAINTENANCE (PRAIRIE
REGION)

There appeared on behalf of the Company:

P. A. Maltby	Supervisor Labour Relations, C.P.R., Winnipeg
F. B. Reynolds	Asst. Supervisor Labour Relations, CPR, Wpg.
R. B. Bremner	Special Duties, C.P.R., Winnipeg

And on behalf of the Brotherhood:

R. T. O'Brien	General Chairman, U.T.U. (T) - Calgary
F. W. Larry	Local Chairman, U.T.U. (T) - Winnipeg.

AWARD OF THE ARBITRATOR

The procedure established by Article 9 of the Yard Agreement requires the union representatives to identify the specific moves which cannot in their opinion, be performed safely with two men. In this case, a survey of the assignment in question was carried out, with the Local Chairman observing on behalf of the union. There has, however, been no identification of specific moves which it is said could not be performed safely with two men. Rather the union has taken the position that the survey itself was not appropriate, and that conditions on the assignment had changed subsequent to the survey.

In particular, it is said that the work pattern in the Union Stock Yards area and at Purity Flour Mills had changed since the time of the survey. There had indeed been changes in the volume of traffic at these locations - especially at the Union Stock Yards - over the course of the year. There do not appear to have been any changes in trackage or buildings which would affect the matter. In the case of the Union Stock Yards area, traffic increases greatly between mid-October and the end of November on account of the annual movement of livestock. The survey was held in February, and could not be expected to reflect all of the work of the assignment on an annual basis. In the case of Purity Flour Mills, while there appears to have been an increase in traffic over the course of the year, although this was subject to fluctuations. Considerable traffic was handled there at the time of the survey, and I am unable to conclude that the survey in that respect should be regarded as not in compliance with Article 9.

Traffic to any of the industries served by an assignment such as this may vary periodically and seasonally. In some cases, there may be no traffic to certain industries during any particular week. Later, there may be some traffic there. Would this then mean that a survey taken at a time when there was no traffic to a certain industry was of no further use? If this were so, the entire procedure contemplated by Article 9 would be rendered nugatory. It is fair to say that there will always be fluctuations in the traffic handled on any assignment. The survey provides a sample of the work being done, and there is a procedure in the agreement governing the taking of that sample. Where this is followed, it cannot properly be said the sample is invalid simply because if it had been taken some other time, it would have been different. Here, if the survey had been taken in November, during peak activity at the Union Stock Yards, it could with equal, if not greater force have been said to give an unrepresentative picture of the work.

Some industries, such as the Stock Yards, are bound to have seasonal variations in the volume of traffic handled. This annual phenomenon is no doubt well known, but it may be observed there was no objection taken on that score at the time of the survey. In any event, there was traffic handled at the Union Stockyard during the survey period.

While the determination whether a crew is reducible must be made in accordance with Article 9, upon an analysis of specific moves, it should be obvious that such a determination does not amount to a finding that all work which might arise on the assignment could always be handled safely by two men. The survey itself is, as I have said, a sample, and there will naturally be situations not included in it. Where situations arise which cannot in fact be handled safely by two men, then it will be up to the company to make arrangements for the proper performance of the work. That question, however, is one which could arise in any event, and is distinct from the question arising under Article 9. Under that article, there is to be a survey, a specification of questioned moves, and a determination in that context of the matter of reducibility in general.

In the instant case, I am unable to conclude that the survey was improper or that any intervening events have rendered it nugatory. The matter was proceeded with in accordance with Article 9 of the Yard Agreement. The assignment in question was not changed, although there were natural and seasonal fluctuations in the volume of work. There has, however, been no specification of moves which could not be performed safely with two men. Accordingly there must be said to be no dispute of the nature contemplated by Article 9, and the only conclusion possible under the agreement is that the crew in question is reducible. I so award.

J. F. W. WEATHERILL
ARBITRATOR