CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 289

Heard at Montreal, Tuesday, June 8th, 1971

Concerning

CANADIAN PAClFlC RAlLWAY COMPANY

and

UNlTED TRANSPORTATION UNION (T)

DISPUTE:

Whether or not notice of discontinuance of Trains 232 - 233 - 234 - 235 - 131 - 134 - 137 - l3S - 201 - 206 was required to be given to the Union.

JOlNT STATEMENT OF ISSUE:

Effective August 1, 1970, Trains Nos. 232, 233, 234 and 235 on the M. and O. Subdivision, Nos. 131, 134, 137 and 138 on the Lachute Subdivison and Nos. 201 and 206 on the Adirondack and Sherbrooke Subdivisions were abolished.

It is the contention of the United Transportation Union (T), CP Eastern and Atlantic Regions, that the Company violated Article 45 - Material Change in Working Conditions, Section 1, Clauses (a) and (b) of the Collective Agreement when it did not serve the notice specified therein. The Company contends that Article 45, Section 1, Clauses (a) and (b) have no application in this instance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. H. BREEN GENERAL CHAIRMAN	(SGD.) E. L. GUERTlN REGIONAL MANAGER O & M ATLANTIC REGION

There appeared on behalf of the Company:

C. E. Moore	Supervisor Labour Relations, C.P.R., Montreal
D. D. Wilson	Labour Relations Officer, C.P.R., Montreal
R. O'Meara	Labour Relations Assistant, C.P.R., Montreal

And on behalf of the Brotherhood.

L. H. Breen	General Chairman, U.T.U.(T) Montreal
G. W. McDevitt	Vice President, U.T.U. Ottawa
J. Callaway	Special Representative, U.T.U. - Ottawa

AWARD OF THE ARBlTRATOR

Article 45 (1) (a) of the collective agreement provides as follows:

> "(a) The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appro- priate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article."

The first question to be determined in this case is whether the discontinuance of the trains referred to constituted a material change in working conditions, having a materially adverse effect on employees. In determining what might constitute a change of this sort, the circumstances are to be regarded in the light of Article 45, read as a whole. In this connection, certain general remarks set out in Case No. 221 are applicalbe. Here, there is no duoubt that the discontinuance of a number of trains led to adverse effects on employees of the sort which might be minimized by measures such as those set out in Article 45. lt seems clear to me that this was the very sort of situation to which the provisions of Article 45 were, in general, directed.

lt is contended by the company, however, that the changes in question are of the sort described in Article 45 (I) (1), and that for this reason Article 45 itself does not apply. Article 45 (I) (1) provides as follows:

> "(1) This Article does not apply in respect of changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional reassignment of work or other norral changes inherent in the nature of the work in which employees are engaged."

It is argued that the discontinuance of these trains was a normal change inherent in the nature of the work in which trainmen are engaged. Care must be taken in the application of the language of this article. As was said in Case No. 286, which dealt with different language in an agreement between other parties, but which is to an essentially similar effect as that before me, "Practically every operational change could no doubt be attributed to "fluctuations of traffic" so as to restrict the application of the Article to much less than its proper scope." There have been a number of cases dealing with the application of provisions of this sort; these cases have involved a wide variety of situations, and it may be that in some cases anomalous results occur. Each is to be considered having regard to the particular circumstances, and the language of the particular collective agreement.

In Case No. 101 the company posted a schedule showing two separate starting points for a pool operation which had formerly been covered by crews from the one point. It was considered by the arbitrator

that there was an "operational change" within the meaning of the collective agreement, and further that there was nothing to support a claim that the case came within the exceptions relating to a "general decline in business activity". In Case No. 221 it was held that the introduction of ground-to-cab radios at Alyth constituted a "material change in working conditions". It was said in the award in that case that "where a change in working conditions creates a situation in which it may be possible to reduce the size of a number of yard crews, it surely must be said that such a change is a "material'' change - - - in that it leads to adverse effects on employees of a sort which may be minimized by measures (such as those set out in the article)". In Case No. 271 it was held that discontinuance of messenger service on C.P.R. Trains 1 and 2 constituted an "operational and/or organizational" change; that there had been a stop to a certain type of business and not a "general decline in business activity" or "fluctuation in traffic" as that phrase was used in the article concerned. A similar result was reached in Case No. 286.

In Case No. 228, as in the instant case, certain trains were simply cancelled. The reduction in level of operations was held in that case to have been brought about by fluctuation of traffic. In Case No. 235 it was held that the closing of the St. John's Coastal Office because of a seasonal decline in traffic volume did not come within the article. In Case No. 272 various staff reductions occurring over a period of time at Moose Jaw were found to have been due to "fluctuation of traffic", and it was noted that "fluctuations" included "general declines". In Case No. 284 the abolition of the position of Messenger at St. John's was held not to come within the section for a number of reasons. In Case No. 287 it was held that the transferring of the work of manifest typing did not, in the circumstances, require the giving of notice. It may be observed, however, that in that case the company did give notice of the abolition of the position of typist at Argentia.

As I have indicated, there are differences in the language of the applicable collective agreements in these cases, and there are, of course, great differences in the factual situations involved. In the instant case, the evidence of both parties makes it clear that in fact the number of passengers (both the total number of passengers and the number of revenue passengers; declined, prior to the cancellation of the trains. It would appear from the material before me that much of this decline occurred after the company had altered the schedules of the trains in such a way as to make them, perhaps, less desirable to the travelling public. While it is difficult to characterize such situations in terms of the broad language of Article 45, it is my view that, having regard to the circumstances of the case, and the apparent purpose of Article 45, what occurred could not properly be said to be a "normal change" within the meaning of Article 45 (I) (1). As was said in Case No. 286 (and it is equally applicable to the language in question here) "we are concerned with giving meaning to the phrase in the context of a provision for job security". Article 45 (1) (1) operates so as to restrict the circumstances in which the company is required to give notice, but not so as to destroy the overall effect of the provision. It is true that the collective agreement makes provision for reduction in number of crews, abolition of assignments, abolition of yards, and the like.

The existence of such provisions does not make these "normal" events, and these provisions do not replace Article 45, which gives rise to a different sort of question. Whether or not such changes would constitute material changes having material adverse effects on employees, or whether they would come within clause (1) or not, would be matters to be determined in the particular circumstances. In the instant case, it is my view that the discontinuance of the trains in question was not a normal change within the meaning of Article 45 (I) (1), and that this is a case in which notice under Article 45 ought to have been given.

For the foregoing reasons, the grievance is allowed.

(SGD.) J. F. W. WEATHERILL
ARBITRATOR