CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 331

Heard at Montreal, Tuesday, January 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Alleged violation of Article 153 of Agreement 4.16 when certain passenger trains were discontinued, November 1, 1970.

JOINT STATEMENT OF ISSUE:

Due to the continuing decline in passenger traffic handled on that portion of the Consolidated 13th and 14th Seniority District, commonly known as the "Bruce Peninsula", the Company applied to the Canadian Transport Commission, pursuant to the National Transportation Act of 1967, to discontinue the following passenger trains handled by the undernoted train crews:

Nos. 672-671-670, Owen Sound - Toronto,
Home Terminal - Owen Sound - 2 crews;

Nos. 660 to 667, Kincardine - Goderich,
Home Terminal - Kincardine - 2 crews,

Nos. 668 - 669 - 656, Palmerston - Southampton,
Home Terminal - Palmerston - 1 crew.

Following public hearings and representations by all interested parties, the Commission approved the Company's application, and the foregoing passenger trains were discontinued effective November 1, 1970.

The General Chairman submitted a grievance contending that Article 153, Section 1, Rule (a) of Agreement 4.16 had been violated by the Company when it discontinued these trains. The Company has declined the grievance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. R. ASHMAN GENERAL CHAIRMAN	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT - LABOUR RELATlONS

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C.N.R., Montreal
M. A. Matheson	Labour Relations Assistant, C.N.R., Montreal
L. I. Brisbin	Assistant Superintendent, C.N.R., London

And on behalf of the Brotherhood:

G. R. Ashman	General Chairman, U.T.U.(T), Toronto
J. B. Meagher	Vice Chairman, General Committee, U.T.U.(T) Belleville
F. R. Oliver	Secretary, General Committee, U.T.U., Toronto
J. Vaughn	Local Chairman, U.T.U.(T)

AWARD OF THE ARBITRATOR

Article 153 of the collective agreement deals with material changes in working conditions, and Section 1 (a) thereof is 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 appropriate 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."

Somewhat similar collective agreement provisions have been the subject of awards in a number of cases, and are reviewed in Case No. 289, which is in many ways analogous to the instant case. The first question to be determined is whether the discontinuance of the trains referred to constituted a material change in working conditions, having a materially adverse effect on employees. In this case, it is my view that it was the very sort of situation to which the provisions of the article were, in general directed.

It is the Company's position, however, that the changes in question are of the sort described in Section 1(1) of Article 153, and that for this reason the article itself does not apply. Section 1 (1) is 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 normal changes inherent in the nature of the work in which employees are engaged."

It seems clear that there has been, over the years, a decline in traffic handled on these trains. Some years ago, mail and express service was eliminated and a railiner service inaugurated. While there does not appear to have been a drastic decline in traffic during the period immediately prior to the cancellation, I have no doubt that there has been a general decline in the amount of traffic,

and that it can properly be said to have "fluctuated" downward.

As was said in Case No. 286, which dealt with a somewhat different provision, albeit to an essentially similar effect, "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 it proper scope". As in the case of the article which was considered in Case No. 289, and which is identical in this respect to the provision now before me subsection (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". Of course, in circumstances to which subsection (1) applies then of course Article 153 has no application at all, but in determining whether or not particular circumstances do come within subsection (1) it is to be borne in mind that it is a provison to an article which has general application to material changes of this sort. As such, it is to be interpreted strictly, having in mind the purpose of the article as a whole, that is, in the context of a provision for job security.

There may be many operational or other changes which would not require the giving of notice, and there are statements in the Union's presentation which go too far in this respect. The mere cancellation of a train, or a highway run, is not necessarily a material change within the meaning of the provision: See Case No. 318. In Case No. 228 certain trains were cancelled as a result of a very substantial reduction in passenger traffic between Edmonton and Calgary. It was held that it was a change brought about by "fluctuation of traffic" and that it came within the provision in that agreement by which the terms "Technological, Operational and Organizational change" were said not to include "changes brought about by fluctuation of traffic". In the provision now before me, however, as in that dealt with in Case No.289, it is provided that the "material change" article does not apply in respect of certain changes (including fluctuations of traffic) which are "normal changes inherent in the nature of the work in which employees are engaged".

In the instant case, as in Case No. 289, what occurred could not, in my view, properly be said to have been a normal change inherent in the nature of the work in which employees are engaged, within the meaning of Article 153(1)(1). It was not, therefore, a case coming within the provison and it remains a situation in which the notice called for by Article 153 ought to have been given.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR