CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.428

Heard at Montreal, Tuesday, December 11, 1973

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL - PR. REG.)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Failure of the parties to agree on the consist of an extra yard crew to be used in yards where the parties have agreed that all regular yard assignments are reducible.

JOINT STATEMENT OF ISSUE:

The Company requested certain specific assignments be determined as reducible, i.e., capable of being manned with a reduced crew consist of one Yard Foreman and one Yard Helper, in accordance with Yard Article 9 in certain yards. Agreement was reached between the Company and the Union that all regular yard assignments in these yards were determined reducible and were so posted by bulletin.

The Company contends that the provisions of Yard Article 9 apply equally to regularly assigned crews and crews employed on extra shifts.

The Union contends the provisions of Yard Article 9 only apply to the regular assigned crews which have been determined reducible.

FOR THE EMPLOYEES:

(SGD.) R. T. O'BRIEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) W. J. PRESLEY
GENERAL MANAGER, O & M
PRAIRIE REGION

There appeared on behalf of the Company:

P. A. Maltby	Supervisor Labour Relations, CP Rail, Winnipeg
F. B. Reynolds	Assistant Supervisor, CP Rail, Winnipeg
G. C. Harvey	Assistant Superintendent, CP Rail, Regina
E. T. Sadler	Assistant Superintendent CP Rail, Kenora
D. D. Wilson	Labour Relations Assistant, CP Rail, Montreal
R. Colosimo	M?nager, Labour Relations, CP Rail, Montreal
J. Ramage	Special Representative, CP Rail, Montreal

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The issue giving rise to this dispute is the refusal of the Union to agree to the manning of extra yard shifts at Regina and Swift Current by reduced crews consisting of a foreman and one helper. In the cases of the Regina and Swift Current yards agreements have been made between the parties with respect to each of the regular and regular relief yard assignments there operated. Previously, similar sets of agreements had been made with respect to each of the regular and regular relief assignments operated at the Saskatoon and Brandon yards. There, the Company had assigned reduced crews to operate extra yard assignments, but claims were made by employees in respect of these assignments, and with respect to Regina and Swift Current yards the Company has requested that extra yard assignments be subject to manning by reduced crews.

There are really two questions of general importance arising from these circumstances, and which must be decided:

1) Does the determination or agreement that all yard crews in a particular yard are reducible carry the implication that an extra crew in such yard is reducible?

2) Is there scope, under the collective agreement, for a determination that an extra yard crew is reducible?

The matter is governed by Article 9 of the Yard Rules, the material provisions of which are as follows:

"ARTICLE 9 - FULL CREW

(a) A yard crew shall consist of not less than a foreman and one helper in the following yard.

Yorkton (one assignment)

In all other yards a yard crew shall consist of not less than a foreman and two helpers except as provided hereunder.

Yardmen will not be required to work with less than a full crew as specified.

(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 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. 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 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.

(e) Where it has been determined by agreement or arbitration that a crew consist can be reduced such crew shall thereafter be a "reducible crew".

(f) At a yard where there are "reducible crews", an up-to-date list of such crews shall be posted copies of which will be supplied to the Local and General Chairman. - - - - - - -"

The first question arising in this case relates to the effect of the determination or agreement that all yard crews in a given yard are reducible. This is a matter in which it is essential to be clear. If an agreement were made in the very terms that "all yard crews" in a given yard were reducible, then it would indeed appear to follow that an extra assignment fell within the scope of that agreement, and was therefore reducible. It is important to note that that was not the agreement in the cases which have arisen here. The agreements, or in some cases the series of agreements, were made with respect to specified regular or regular relief assignments. As it happens, these were, at the material times, all of the regular or regular relief assignments then operating in those yards. But the agreements were not in respect of "all" assignments, they were in respect of specific assignments, and could not properly be construed as going further.

In C.R.O.A. Case No.11O, there had been an agreement with respect to the reducibility of three yard crews at Trenton. These were, it seems, all of the crews then operating at Trenton. In the course of the Award, the Arbitrator indicated that the effect of that agreement was to add Trenton to the list of yards described in Clause (a) of the yard rules there in question, which seems to have been similar in form to Clause (a) of Article 9 of the Yard Rules applicable here. In the instant case, the Company argues that the effect of the

agreement covering each of the regular and regular relief yard assignments at the yards in question is to add those yards to the list (consisting of Yorkton), set out in Clause (a). With respect, I cannot agree. Although I am in agreement with the actual decision in Case No.110, it seems to me that the proposition that an agreement on the reducibility of each of the existing assignments in a yard is equivalent to the addition of that yard to a list of yards where reducible crews may always be used goes too far and certainly was not essential to the decision in that case. Article 9, it will be noted, provides in detail for the survey of particular assignments, and it is with respect to such specific assignments that agreement, or arbitral decision, is contemplated. It is the assignment, not the yard, which is reducible.

The agreement or determination that each crew operating in a particular yard is reducible does not, then, carry the implication that extra crews are reducible.

The second question to be decided is whether extra yard assignments are, in any event, subject to a determination that they are reducible. It is the Union's position that the provisions of Article 9 of the Yard Rules which include the surveying of assignments for five consecutive working days and the identification of specific moves which are alleged not to be able to be performed safely with a reduced crew, simply do not contemplate "extra" crews as reducible. The Company contends that in a yard where all assignment have been agreed or determined to be reducible there must be a means of determining the reducibility of extra crews, and that the situation is otherwise absurd. On this last point, it should be remarked that a conclusion that the provisions of the Yard Rules did not contemplate the reducibility of extra crews would not be an "absurdity" in the sense of being a contradiction of other provisions or of being incapable of practical application. Such a result might be considered by one or the other of the parties as awkward, silly or even outrageous, but it might for all that be the effect of the agreement the parties have made.

Of course, as noted above, if the parties had indeed agreed in terms that "all" crews in a particular yard were reducible, then it would follow that extra crews were reducible. But barring such an agreement - and there is none in the instant case - the question would appear to be simply whether there is anything in the nature of an "extra" assignment that makes it incapable of reduction as contemplated by Article 9. This question, in my view, can only be given a rather qualified, and perhaps unsatisfactory answer under the provisions of Article 9 as it now stands.

An extra assignment is, it would seem, a new assignment, but without all the characteristics of a regular or regular relief assignment. Whether or not any particular extra assignment could be performed by a reduce crew with maintenance of adequate safety would depend, as in the case of any other assignment, on the material circumstances. In the case of regular and regular relief assignments the nature and circumstances of the work to be done can be established in a general way from a consideration of actual experience as recorded in a survey. To the extent to which the work performed on an "extra" assignment is subject to this sort of general determination, so that

it can be known with reasonable certainty what sort of moves are to be made and the circumstances in which they are to be made, then it may be that even an "extra" assignment would have that degree of permanence and regularity that would permit a meaningful determination to be made of the question whether it could be operated by a reduced crew with maintenance of adequate safety. If, however, the work of the assignment is not subject to that sort of determination, then it would be impossible to say whether it could be performed by a reduced crew with maintenance of adequate safety. In that case it would be quite understandable that Article 9 did not contemplate that type of assignment as being reducible.

In the instant case, the proper form of award is simply to declare that the determination of whether an extra yard assignment is reducible is a matter to be considered on the facts of each case which may arise. Thus, while it must be held that the agreements made in respect of Saskatoon, Brandon, Regina and Swift Current do not necessarily involve the reducibility of crews on extra assignments, it cannot be said on the other hand that no extra assignment could ever be held to be reducible.

J. F. W. WEATHERILL
ARBITRATOR