

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 593

Heard at Montreal, Tuesday, February 8, 1977

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION (U)

DISPUTE:

1. The Union disputes the right of the Company to set up a Road Switcher with home terminal at Brandon to work between Brandon and Souris.
2. Claims for deadheading between Souris and Brandon and return were submitted on December 22nd and 23rd, 1975, by Conductor D. Kettles and Trainman G. Williams account the Union's contention the assignment was improper. The claim for deadheading from Souris to Brandon on December 22nd was paid for reasons other than that for which they were submitted, but the claim for deadheading from Brandon to Souris was denied.

JOINT STATEMENT OF ISSUE:

On December 10th, 1975 the Company issued Bulletin No. 184 which read as follows:

"TO: CONDUCTORS' & TRAINMEN'S BOOKS AT SOURIS, MINNEDOSA, BRANDON, WINNIPEG, BROADVIEW, BREDBURY, ESTEVAN, PORTAGE LA PRAIRIE, LA RIVIERE, SUTHERLAND LANIGAN, NIPAWIN, PRINCE ALBERT

Please correct Bulletin No. 182 dated December 10th to read as follows: Applications will be received in my office up to and including 1200 Sunday, December 21, 1975 for ONE Conductor and TWO Trainmen, to man Road Switcher Assignment on Estevan Subdivision.

Although Main Terminal is Souris, starting point and terminating point of assignment will be Brandon. Assignment will commence duty 2100 daily Sunday through Friday effective about December 22nd, 1975.

(Signed)
K. W. Edwards - Assistant Superintendent"

The Company contended that they had the right, under Article 1 Clause (b), to establish a Road Switcher Assignment in the manner outlined in Bulletin No. 184, as the Seniority Districts as listed in Clause 2 of the Interchangeable Rights Agreement and for which new Master Seniority Lists were compiled for each new Seniority District in

accordance with Clause 3 of the Interchangeable Rights Agreement, are the promotion territories for Trainmen the Prairie and Pacific Regions and that these are the territories within which Trainmen may be assigned to Road Switcher Service.

The Union contends that in setting up the Assignment in the manner specified in Bulletin No. 184, the Company is in violation of Article Clause (b) which reads as follows:

"Trainmen assigned to Road Switcher Service will perform all service required and may be run in and out and through their assigned home terminal or any other terminal without regard for rules defining completion of trips, but will not be run off their promotion territories, time to be computed continuously from time required to report for duty until released from duty at home terminal."

also that part of Article 35, Clause (g) which states as follows:

"Men on freight seniority, sections 3 and 4 will be run as much as possible on their assigned seniority districts, but are required to run on any part of freight seniority sections 3 & 4 if required."

as well as Item 4 of the Memorandum of Agreement signed at Montreal on December 17th, 1971, establishing Interchangeable Seniority Rights, Road and Yard, which reads as follows:

"Roadmen with a seniority date prior to May 14, 1971 shall retain prior rights to road work on the territory on which they held seniority prior to the effective date of this Agreement and yardmen and switchtenders with a seniority date prior to May 14, 1971 shall retain prior rights to yard work on the territory on which they held seniority prior to the effective date of this Agreement. An employee with a seniority date on or subsequent to May 14, 1971, shall not have prior rights in either class of service but shall have seniority in both classes of service on his seniority territory as revised from the date of his entry into the service as either a trainman or yardman. Seniority lists together with the provisions of Article 35, Clause (g), Road Rules, and Article 7, Clause (d), Yard Rules, in effect prior to the effective date of this Agreement shall be preserved for the purpose of administering 'protected' status and prior rights except that trainmen or yardmen with a seniority date on or subsequent to May 14th, 1971 shall be removed from former seniority lists and their names shall appear only on the new master seniority list."

The Union further contends that the deadhead claims are valid as submitted as the Road Switcher Assignment, which was created by the Company at Brandon, was improper and crews were required to deadhead from their home terminal at Souris to Brandon terminal and return. Claims were therefore submitted in accordance with Article 22, Clause (a) of the Collective Agreement which states as follows:

"Trainmen required by the Company to deadhead from one terminal to another, irrespective of the manner in which the deadheading

is done, shall be paid on the basis of 12.5 miles per hour at the through freight rate for the actual time occupied. Time to be calculated from time ordered for until arrival at objective terminal. Except as provided in Clause [b) of this Article, not less than eight hours will be paid; overtime pro rata."

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE
General Chairman

FOR THE COMPANY:

(SGD.) R. J. SHEPP
General Manager, O & M

There appeared on behalf of the Ccpany:

J. Ramage	Special Representative, CP Rail, Montreal
F. B. Reynolds	Assistant Supervisor Labour Relations, CP Rail, Winnipeg

And on behalf of the Brotherhood:

P. P. Burke	General Chairman, U.T.U.(T), Calgary
J. McLeod	Vice General Chalmrman, U.T.U.(T)- Calgary

AWARD OF THE ARBLTRATOR

There are, as appears from the Statement of Dispute, two claims before me. The first relates to the Company's right to establish a particular Road Switcher assignment. The second involves a set of claims for deadheading. The deadheading claims appear to stand or fall on the success of the first claim, and while other considerations with respect to them were advanced in the Company's brief, I do not propose to deal with them independently in this award. To the extent that such claims are advanced independently of the claim relating to the establishment of the assignment, I retain jurisdiction to deal with them on the application of the Union.

This case relates to the establishment of a Road Switcher assignment, said to be on the Estevan subdivision, but actually involving both the Estevan and Broadview subdivisions, the switching work being planned for the Estevan subdivision, at Souris.

The purpose of the assignment was to transport empty coal cars from Brandon, on the Broadview subdivision, to Souris, on the Estevan subdivision, where they would be exchanged for loaded coal cars which would be taken to Brandon. The route involved is from Brandon to Kemnay (on the Broadview subdivision 8.2 miles west of Brandon) and then on the Estevan subdivision from Kemnay to Souris (on the Estevan subdivision, 16.2 miles south of Kemnay). It is the Union's first contention that this assignment was contrary to Article 18 (b) of the collective agreement. That Article is as follows:

"(b) Trainmen assigned to Road Switcher Service will perform all service required and may be run in and out and through their assigned home terminal or any other terminal without regard for rules defining completion of trips, but will not be run off their promotion territories, time to be computed

continuously from time required to report for duty until released from duty at home terminal."

The particular question is whether the assignment required trainmen in Road Switcher Service to be "run off their promotion territories" In this regard, Article 35 (g) of the collective agreement sets out "Seniority Districts", as comprising a number of sections. That portion of the Estevan subdivision from Kemnay to Estevan (that is, including and beyond Souris), is in Section 4, whereas the Broadview subdivision from Brandon to Broadview (that is, including and beyond Kemnay), is in Section 3. It would appear from this that the route of the assignment in question falls within two separate seniority districts and, as far as this case is concerned, within two different "promotion territories".

It seems to have been the Company's first response to the grievance that the assignment was proper, because of an agreement between the parties dated September 18, 1963, and effective 23 September, 1963, relating to the manning of "freight trains" between Souris and Brandon. This Agreement provided, by Clause (2) thereof, that trainmen on Freight Promotion Stction 4 would be entitled to all mileage run between Brandon and Souris. It is not clear to me that, if this section applied, it would be a complete answer to the grievance, although it might be so as a practical matter. In any event, the Union's response is that the agreement of 18 September 1963 deals only with "freight trains" and not with "road switcher service". Certainly there is a distinction for some purposes between freight service and road switcher service although it is possible that the expression "freight trains" might be wide enough to include, for some purposes, trains working in "freight" and also in "road switcher" service. This is a question which, for reasons which will appear, it is not necessary for me to decide in thls case.

At the hearing in this matter, the Company relied particularly on an agreement dated 17 December 1971 and effective 30 April 1972. By that agreement, which is still in effect, Article 35 (g)_was revised, to provide for a rearrangement of seniority districts. Now, both the Broadview subdivision, from Brandon to Broadview and the Estevan subdivision, from Kemnay to Estevan, come within District 2 (Manitoba). There would, therefore, appear to be no running off of promotion territories in the assignment in question, since all of the trackage falls within the same promotion territory.

To this, the Union's response is that Clause (4) of the agreement of 17 December 1971 protects the "prior rights" of certain employees. That clause is as follows:

"4. Roadmen with a seniority date prior to May 14, 1971 shall retain prior rights to road work on the territory on which they held seniority prior to the effective date of this Agreement and yardmen and switchtenders with a seniority date prior to May 14, 1971 shall retain prior rights to yard work on the territory on which they held seniority prior to the effective date of this Agreement. An employee with a seniority date on or subsequent to May 14th, 1971, shall not have prior rights in either class of service but shall have seniority in both classes of service on his seniority

territory as revised from the date of his entry into the service as either a trainman or yardman. Seniority lists together with the provisions of Article 35, Clause (g),

Road Rules, and Article 7, Clause (d), Yard Rules, in effect prior to the effective date of this Agreement shall be preserved for the purpose of administering "protected" status and prior rights except that trainmen or yardmen with a seniority date on or subsequent to May 14th, 1971 shall be removed from former seniority lists and their names shall appear only on the new master seniority list."

Indeed the "seniority districts" now listed in Article 35 (g) are so listed merely for the purpose of identifying the territories on which such "prior rights" are held. The route of the assignment in question does cover two such "prior rights" territories.

As the collective agreement now stands, it is my view that the Company would be entitled to establish an assignment such as the one in question. If it were otherwise, the agreement of 17 December 1971, embodied (as the note to Article 35 (g) makes clear) in the current collective agreement, would make little sense. The Company is, nevertheless, bound to recognize the "prior rights" of employees on the territories involved. These "prior rights" existed independently on each of the two subdivisions concerned, and while both subdivisions now come within one seniority district, they came within separate seniority districts prior to the agreement of 17 December 1971. For the route covered by the assignment in question, then, there may exist two sets of employees having "prior rights", one relating to work on the Broadview subdivision and one relating to work on the Estevan subdivision. And in this connection I would add that "work" is not necessarily restricted to switching work, but would include generally the operation of the train.

The "prior rights" which are protected under the agreement of 17 December 1971 are not merely seniority rights to a classification or to job security benefits. They include, expressly, rights to "road work on the territory". Thus, on the language of the applicable agreements, it is my view that employees on either the Estevan or Broadview subdivisions having "prior rights" within the meaning of the agreement of 17 December 1971 could assert those rights with respect to that portion of the route coming within their seniority district as described in Article 35 (g). There is no competition contemplated as between Brandon and Souris trainmen. Each would be entitled to priority, in accordance with his seniority, over that portion of the route falling within his seniority district.

From all of the foregoing, it is my conclusion that it was open to the Company to offer the assignment as it did (and it was bulletined in such a way as to give notice to all interested employees), but that it would have had to accommodate - perhaps even by altering the assignment, or cancelling it if that was not feasible - the interests of employees (on either subdivision) having prior rights. Apart from its obligations to employees having prior rights, however, the Company was free to bulletin the assignment as it did. It was not, in itself, an improper assignment, and those who bid on it and who were awarded the jobs do not appear to have been persons claiming any

prior rights. There does not, then, appear to have been any justification for claims for deadheading, and subject to what was said at the outset of these reasons, such claims are dismissed.

Earlier in these reasons, I indicated that it was not necessary to make any decision in this case with respect to the application of the agreement of 18 September 1963. That agreement provided, in Clause (1) thereof, for a waiver of Clause 30 (d) of the collective agreement, which appears to relate to the manning of new lines or extensions. That does not appear to have any application here. Clause (2) provides, in effect, that Souris trainmen (having seniority on the old promotion Section 4) are entitled to all mileage run between Brandon and Souris, Souris being the home terminal. This agreement would appear to have been largely superceded by the agreement of 17 December 1971, but to the extent that any Souris trainmen having prior rights would have asserted those rights in this case, they may well have been entitled to succeed, both with respect to the bulletin generally, and with respect to a claim for deadheading. Such questions, however, do not arise on the facts of the instant case, and need not be decided herein.

Subject to my finding that employees having claims of prior rights to work on the two subdivisions in question would have been entitled to assert them, I conclude that the assignment itself was not improper, and the grievance must accordingly be dismissed.

J.F.W. WEATHERILL
ARBITRATOR