CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 913

Heard at Montreal, Tuesday, March 9, 1982
Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION
(PRAIRIE & MOUNTAIN REGIONS)

DISPUTE:
Alignment of work territories between Canora and Dauphin terminals with elimination of miles equalization.

JOINT STATEMENT OF ISSUE:

On 16 October 1981, the Company served notice pursuant to Article 139 of Agreement 4.3 of its intention to divide the work between Canora and Dauphin terminals as follows:

1. All work on the Togo Subdivision would be handled by train crews home-terminalled at Dauphin.

2. All work on the Preeceville Subdivision now divided between the Canora and Dauphin terminals would be handled by train crews home-terminalled at Canora.

The Company also indicated that coincidentally the following provision of a November 18, 1974, Memorandum of Agreement was to be eliminated:

"All freight traffic handled between Dauphin and Canora (Togo Subdivision) will be handled by conductors and trainmen home-terminalled at Dauphin and Canora on an equal mileage basis with no added cost to the Company."

The Company, in its notice, cited added costs and numerous problems with this equalization of miles as reasons for initiating this change. The Company has offered measures to recognize the loss of work to Canora employees but these measures have been rejected by the Union in that equalization of miles is being discontinued. Consequently the parties have been unable to reach agreement pursuant to Article 139.1(c) of Agreement 4.3 and wish to proceed directly to arbitration, bypassing the Board of Review provided for in Article 139.1(c).

FOR THE EMPLOYEES:

(SGD.) L. H. MANCHESTER
GENERAL CHAIRMAN

FOR THE COMPANY

(SGD.) G. MORGAN
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

R. J. Wiebe	- Regional Labour Relations Officer, Winnipeg
J. A. Cameron	- Manager Labour Relations, Montreal
M. E. Proulx	- Agreements Assistant, Winnipeg
K. Brownridge	- Trainmaster, Canora

And on behalf of the Employees:

L. H. Manchester	- General Chairman, UTU, Winnipeg
R. T. O'Brien	- Vice President, UTU, Ottawa
G. Garlinski	- Local Chairman, UTU, Dauphin
D. Hilton	- Local Chairman, UTU, Canora, Sask.

AWARD OF THE ARBITRATOR

Article 139 of the Collective Agreement deals with "material changes in working condition", and Article 139.1 calls for notice of such changes, and for agreement, or a decision, on measures to minimize the adverse effects of such changes, prior to their implementation.

It would appear to be acknowledged that the division of work referred to in the Joint Statement, namely (1), that crews home- terminalled at Dauphin handle all work on the Togo Subdivision, and (2), that crews home-terminalled at Canora handle all work on the Preeceville Subdivision, would constitute "material changes" in working conditions. Notice of such changes was given, negotiations did not result in agreement, and a decision is now sought, as contemplated by Article 139.

As a general matter, the work assignments above referred to would be assignments which it would be open to the employer to make. Since they involve material changes in working conditions, there would have to be agreement (or a decision) on measures to minimize their adverse effects on employees, but that would not affect the employer's right to make the changes themselves. The employer would not be required to justify the changes: the only issue for arbitration would be that of the propriety or sufficiency of the measures to reduce adverse effect on employees affected. In the instant case, the Company made a proposal relating to payment oi' relocation expenses for a) certain employees at Kamsack, relocated to Dauphin and b), certain employees at Dauphin who might be laid off as a result of the transfers in a). These proposals, in themselves, would appear to be reasonable and indeed are not really put in question.

The Union's position, in essence, is that it was not really open to the employer to make the changes in question because of the commitments it made in a Memorandum of Agreement dated November 18, 1974 That agreement dealt (among other things), with the handling of freight traffic between Dauphin and Canora, which is traffic on the Togo Subdivision.

The Memorandum of November 18, 1974, was amended in certain respects by a further Memorandum dated April 22, 1976. That amendment

provided for certain benefits for employees making one of the elections there provided for. The benefits of that amended agreement have, presumably, been obtained by the employees concerned. The amendment did not affect the validity of the second paragraph of Section 3 (b) of the Memorandum of November 18, 1974, which provided that all freight traffic handled between Dauphin and ?anora on the Togo Subdivision would be handled by crews home-terminalled at Dauphin and Canora "on an equal mileage basis, with no added cost to the Company".

It would appear that the "equal mileage" division of work between Dauphin and Canora crews has in fact involved "added cost" to the Company. The issue before me, however, is not one of the application of Section 3 (b) of the 1974 Memorandum, but rather, one of the right of the Company to make (after notice and negotiaiion) the changes now proposed.

In my view, the Memorandum of 1974, as amended by that of 1976, constituted an "agreement", of the sort contemplated by Article 139 with respect to measures to minimize the adverse effects of the material changes made at that time, and which related to the transfer of the home terminal of certain employees from Kamsack (which is on the Togo Subdivision), to Canora. Persons affected by that change would have been entitled to the benefits provided under the 1974 Agreement, as amended.

What is involved in the instant case is a further, and different material change in working condition, namely a reassignment of work on the Togo and Preeceville Subdivisions. To some extent, this reassignment is a response by the Company to the difficulties it has had in "equalizing" the work to which Dauphin and Canora crews were entitled, although there are other reasons as well for the change. Whatever the reasons, there is a material change proposed. The agreement of 1974, as amended, was a response to the material change then proposed it did not prevent the Company from later making other changes, if it was felt that circumstances required them. That is what has occurred.

The change of which notice has now been given would appear to have adverse affects for certain employees. The parties have attempted to negotiate measures to minimize these. The Company has made what appear to be reasonable proposals in this respect. The Union's position, however, is that "notwithstanding the added costs that the Company is incurring, the present equalization of miles practices should continue". That position, it seems, reflects the inability of the Canora and Dauphin locals to reconcile what would appear to be the competing interests of their members. That is not a matter for arbitration - at least not for arbitration between the Company and the Union as a whole! In any event, any dispute as to the application of the 1974 Agreement is a quite distinct matter from that before me, which is one as to the propriety and sufficiency of measures to minimize the adverse effects of the change now proposed. On that issue, which is the only issue before me, the material before me, such as it is, supports the position of the Company. The measures proposed are, essentially, two: 1) up to three former Kamsack employee now working out of Canora would be entitled to transfer to Dauphin, the Company paying their relocation expenses, 2)

any Dauphin employee laid off as a result of transfers contemplated in 1) may relocate to another location on the Prairie Region, the Company paying their relocation expenses. In my view, these provisions are equitable, subject only to this reservation: it may be (there is nothing before me in this respect) that some Canora employees other than former Kamsack employees may be thought to have a higher right to transfer to Dauphin. Such rights should prevail, although the number of transfers to Dauphin is properly limited to three.

Subject to the foregoing reservation, it is my award that the proposed material change may be implemented, provided that the measures proposed by the Company to minimize its adverse effects are carried out.

J. F. W. WEATHERILL,
ARBITRATOR.