CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1023

Heard at Montreal, Wednesday, December 15, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Alleged violation of Article 146 - Material Changes in Working Conditions - of Agreement 4.16 when Train Nos. 422-423 were discontinued June 13, 1982.

JOINT STATEMENT OF ISSUE:

On May 13, 1982, the Company notified the Union that Train Nos. 422-423 between London East and MacMillan Yard would be discontinued due to a general economic downturn in business.

The General Chairman submitted a grievance on May 25, 1982 contending that the Company was in violation of Article 146 by not serving a formal notice of a material change in working conditions.

The Company declined the grievance on the basis that Article 146 was not applicable.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. A. BENNETT	(SGD.) G. E. MORGAN
General Chairman	Director - Labour Relations

There appeared on behalf of the Company:

H. J. Koberinski	- System Labour Relations Officer, CNR, Montreal
M. Delgreco	- Senior Manager Labour Relations, CNR, Montreal
B. Bachanan	- Diesel Fuel and Energy Conservation Officer, CNR, Montreal
J. A. Sebesta	- Coordinator Transportation - Special Projects, CNR, Montreal
C. Gingerich	- Chief Dispatcher, CNR, London
M. Healey	- System Labour Relations Officer, CNR, Montreal

And on behalf of the Employees:

R. A. Bennett	- General Chairman, UTU, Toronto
M. Hone	- Vice General Chairman, UTU, Toronto
T. Hodges	- Secretary, UTU, Toronto
J. Gardner	- Local Chairman, 353, UTU, London

AWARD OF THE ARBITRATOR

Article 146.1 of the Collective Agreement provides, in its opening paragraph, as follows:

> "Material Changes in Working Conditions
>
> 146.1 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 the employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of paragraph 146.1."

It is my view that in the circumstances of this case there was a material change in working conditions which would have materially adverse effects on employees. The Notice called for, however, need not be given and the Article does not apply in the circumstances set out in Article 146.1 (k), which is as follows:

> "(k) 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 reassignments of work or other normal changes inherent in the nature of the work in which employees are engaged."

In the instant case it is the Company's position that the change in question was a change "resulting from a decline in business activity", and that it was a normal change inherent in the nature of the work in which employees are engaged. The issue is whether or not the change in question comes within that proviso.

The cancellation of a train will no doubt be a result - at least in most cases - of a fluctuation in traffic, and due, in a general sense, to a "decline in business activity". There was, in the instant case, a decline in business activity which went beyond what might be considered seasonal or normal fluctuations and was a reflection of depressed economic conditions. While the language used may be interpreted in a very broad manner so as to encompass what occurred here, and indeed virtually any train cancellation, it should not be interpreted in that way where it is used - as here - in an exempting clause to a job security provision. That point of view has been expressed in various cases dealing with this provision or with similar provisions in other Collective Agreements. It is expressed, for example, in Case No. 331, where it was said that the proviso in question "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".

In Case No. 228, certain trains operating between Calgary and Edmonton were cancelled. There had been a decline in business, or at least a fluctuation - downwards - in the traffic concerned, and the

Company consequently cancelled the trains most affected, or at least considered to be most appropriate to be cancelled. It was held in that case that the circumstances came within the proviso and that no notice need be given. In dismissing the grievance, however, it was noted in the Award that "in the instant case the change instituted by the Company did not involve such a matter as a change in starting points or other comparable change in operations or organization, but was simply a cancellation of certain work: a reduction in the level of operations."

In the case now before me, the cancellation of the trains in question was not merely the natural result of a decline in the particular traffic handled. It was rather part of a wider response to an overall change in business conditions, and was part of a series of schedule re-arrangements to better accommodate to changed conditions. What occurred in the instant case (some comparison might be made with Cases 289 and 331) formed part of a structural rearrangement of operations, and constituted something more than a normal response to decline in traffic. It is in that respect that the case may be contrasted with Case No. 228.

For the foregoing reasons, it is my conclusion that the cancellation of the trains in question was something more than the normal sort of change referred to in Article 146.1 (k), and that it was a material change coming within the general terms of Article 146.1. The employees and the union were, in the circumstances, entitled to the procedures and benefits set out in the Article. Accordingly, the grievance is allowed.

J. F. W. WEATHERILL,
ARBITRATOR.