

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1342

Heard at Montreal, Wednesday, March 6, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On June 12, 1984 the Company advised General Chairman Mr. A. W. H. Olson that the Prairie Region, CP Rail, was abolishing 124 Trackman A/Track Maintainer positions across the Region by the end of June, 1984. This staff reduction was effected as follows:

Lakehead Division	- 13 positions effective June 29, 1984
Winnipeg Division	- 19 positions effective June 22, 1984
Brandon Division	- 13 positions effective July 6, 1984
Moose Jaw Division	- 47 positions effective June 22, 1984
Saskatoon Division	- 30 positions effective June 29, 1984

In total, 122 positions were actually reduced.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Article 8.1 of the Job Security Agreement when they did not serve a notice of no less than three months to the General Chairman, of this technological, operational and organizational change when abolishing 122 permanent Trackman A/Track Maintainer positions on the Prairie Region.
2. All the employees who were laid off, displaced or relocated, be made whole for any loss in wages, reduction in wages or expenses incurred, until the notice is served.
3. The Company be required to serve such three months notice to the General Chairman as required in Article 8.1 of the Job Security Agreement and negotiate with the Union as required by Article 8.4.
4. The employees affected be entitled to all benefits available in the Job Security Agreement for which they could qualify if notice

was served.

The Company contends that there was no violation of Article 8.1 of the Job Security Agreement, in that no technological, operational or organizational change was implemented. The Company further submits that Section 15.1 of Wage Agreement No. 41 applies and proper notice was given. The Company denies the Union's contentions and declines payment of same.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN  
System Federation  
General Chairman

FOR THE COMPANY:

(SGD.) J. D. CHAMPION  
FOR: General Manager  
Operation and  
Maintenance

There appeared on behalf of the Company:

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I. J. Waddell	- Manager, Labour Relations, CPR, Montreal
W. C. Tripp	- Regional Engineer, Prairie Region, CPR
J. D. Champion	- Supervisor, Labour Relations, Prairie Region, CPR
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
D. A. Lypka	- Asst. Supervisor Labour Relations, Prairie Region, CPR

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
L. M. DiMassimo	- Federation General Chairman, BMWE, Montreal

On Wednesday, March 6th, 1985, the proceedings were adjourned.

On Tuesday, April 9th, 1985, the proceedings were resumed.

There appeared on behalf of the Company:

I. J. Waddell	- Manager, Labour Relations, CPR, Montreal
J. D. Jardine	- Assistant Chief Engineer, CPR, Montreal
W. C. Tripp	- Regional Engineer, Prairie Region, CPR
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
J. D. Champion	- Supervisor, Labour Relations, CPR, Winnipeg
D. A. Lypka	- Asst. Supervisor Labour Relations, CPR, Winnipeg

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
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R. Y. Gaudreau	- Vice-President, BMW, Ottawa
L. M. DiMassimo	- Federation General Chairman, BMW, Montreal
G. Schneider	- System Federation General Chairman, BMW, Winnipeg, Observer
T. J. Jasson	- Federation General Chairman, BMW, Winnipeg, Observer

#### AWARD OF THE ARBITRATOR

On June 12, 1984, the employer advised General Chairman A. W. H. Olson of the company's intention "to abolish" approximately 124 (later reduced to 122) track maintenance positions along various sections of its Prairie Region. The trade union alleges that the abolished positions were as a result of a technological, operational and organizational change or changes introduced by the company as contemplated under Article 8.1 of the Job Security Agreement. Accordingly, the benefits and the relief contemplated by Article 8 with respect to the adverse effects visited upon employees occasioned by these changes are requested. Articles 8.1 and 8.7 of the Job Security Agreement read as follows:

"8.1 The Company will not put into effect any technological, operational or organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the Union concerned to receive such notices. In any event, not less than three months' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected."

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"8.7 The terms operational and organizational change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged, nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments." (emphasis added)

The company insists that at all material times the abolished positions were occasioned (in Mr. Cavanaugh's language) because "the work involved was either not necessary to be performed or could be performed by fewer employees". Indeed, the company's brief elaborated upon this notion by developing the theme that the manpower cuts were a cyclical and predictable phenomena caused by financial fluctuations of the company. In no way was it conceded that the abolished positions were directly or indirectly triggered by the introduction of any technological, operational or organizational change contemplated by Article 8.1 of the Job Security Agreement.

Or, alternatively, such change, if it did occur, was simply "a normal reassignment of duties arising out of the nature of the work in which the employees are engaged" and thereby was excluded from the ambit of the Job Security Agreement pursuant to Article 8.7.

In short, the company maintained that it acted properly and in accordance with its obligations under the collective agreement in giving the trade union the required 4 day notice of the intended layoffs pursuant to Article 15.1 of Wage Agreement 41:

"15.1 Not less than four working days' advance notice will be given when regularly assigned positions are to be abolished, except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given."

The company's brief marshalled forward facts, statistics graphs, etc., to support its theme that the abolished positions were simply a part of a predictable, cyclical phenomena dictated by the company's financial situation. Moreover, CROA precedents #228, #284, #316 and #423 were referred to in that they sanctioned the notion that such staff reductions, where actuated by the type of rationalization developed in the company's brief, were not situations contemplated under Article 8.1 of the Job Security Agreement.

Moreover, the trade union's brief merely speculated by inference and innuendo that the adverse effects, given the magnitude of the layoffs, could only be occasioned by a technological, organizational or operational change. No real attempt was made (nor perhaps could it have been made) to introduce any material that might substantiate its particular allegation of a technological, operational or organizational change. Indeed, the trade union developed the theory of "a creeping technological change" whose adverse effects over the years were delayed, cumulative but ultimately devastating in their impact as evidenced by the company's notice.

The one obstacle impeding the company from achieving success was contained in a letter dated August 31, 1984, from the then Minister of Transport, The Honourable Lloyd Axworthy, addressed to the then Opposition Critic of the Department of Transport, The Honourable Don Mazankowski. Without quoting the letter at length it is fair to say it incorporates the Minister's reply to two letters addressed to Mr. Axworthy by General Chairman Olson (dated June 18, 1984) and Mr. A. Passaretti, Vice-President, BMW, (dated July 4, 1984) protesting the intended staff cut-backs implemented by the company. In that letter Mr. Axworthy clearly indicated that "the recent abolishment of several permanent positions in the maintenance of way function in CP Rail is the result of new technology and new procedures for performing track maintenance functions".

The company's Representatives at the initial hearing of this dispute scheduled for March 6, 1985, were caught by complete surprise and

were given an adjournment to inquire into and investigate the source of Mr. Axworthy's information. Upon resumption of the hearing on April 9, 1985, the company was able to provide some assistance with respect to the basis of Mr. Axworthy's conclusions. It is fair to say that in July 1984 Mr. C. Maziarski, of Mr. Axworthy's staff, requested information of CP Rail with respect to providing an answer to Mr. Olson's letter of June 18, 1984, protesting the layoffs. In reply, Mr. M. D. Apedaile, Secretary General, Government & Industry Affairs, CP Rail, replied by letter dated July 16, 1984, to Mr. Maziarski's request for information in the following manner:

"Dear Mr. Maziarski,

The following remarks should provide you with the required information to assist the Minister in his reply to Mr. Olson's letter dated June 18, 1984:

In recent years, CP Rail has gone through an important program of plant improvements and this trend is planned to continue in 1985. The use of continuous welded rail and heavier rail sections, the introduction of 9 ft. treated ties in many territories, the replacement of gravel ballast with crushed rock ballast, the replacement of old bridges with more maintenance free structures are all examples of plant improvements that have made it possible to reduce maintenance costs and the number of people required to maintain a mile of track." (emphasis added)

In due course Mr. Axworthy responded to Mr. Olson's letter (and basically made a similar response using the same information to the letters of Mr. Passaretti and Mr. Mazankowski) by incorporating as part of his own reply the contents of Mr. Apedaile's letter referred to herein. The relevant portions of the Minister's letter dated July 25, 1984, reads as follows:

"Dear Mr. Olson:

Thank you for your letters of 28 and 31 December 1983 and 18 May and 18 June 1984, concerning CP lay-offs. I appreciate receiving your comments on this matter and sincerely regret the long delay in replying to you.

I understand the concerns you have raised in your letters. I would note, however, that just as it is essential that Canada's exports remain competitive on world markets, the railways must also remain competitive as suppliers of transportation to Canadian shippers. In order to achieve these basic objectives, the railways must continue to seek improved productivity in all aspects of their activities. . . . .

With reference to your comments on CP's treatment

of its employees, I would point out that CP like other railways, and any other industry must use modern machinery and the newest and best methods to remain competitive. Because of machinery, the railway labourer today can perform his work more safely, more efficiently, and with less possibility for permanent muscle and back injuries than ever before. The Government of Canada played an important role in purchasing modern machinery for the railway to upgrade grain dependent branch lines using railway employees who were members of the Brotherhood of Maintenance of Way Employees. (emphasis added)

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"In recent years, CP Rail has gone through an important program of plant improvements and this trend is planned to continue in 1985. The use of continuous welded rail and heavier rail sections, the introduction of nine-foot treated ties in many territories, the replacement of gravel ballast with crushed rock ballast, the replacement of old bridges with more maintenance free structures are all examples of plant improvements that have made it possible to reduce maintenance costs and the number of people required to maintain a mile of track."

At this juncture perhaps it is appropriate that I refer to a statement contained at the outset of the company's revised brief. I reject categorically any suggestion made by the company that CP "did not participate .. in any manner in assisting the (then) Minister to prepare his response." The conclusive evidence established that the Minister's office sought the assistance of the company in responding to the numerous letters it was receiving (particularly from Mr. Olson) protesting the company's manpower cut-backs. And, the evidence also demonstrated that a company officer with express authority to deal with Government Officials of the Ministerial Rank responded to that request for assistance. In this regard, I am simply constrained to find that company officials must be assumed to have made the necessary inquiries and to have exhibited the required diligence and care with respect to the content of its response.

That is not to say, however, that this Arbitrator is at all bound to give weight to the characterization of the company's actions that were attached by Mr. Axworthy or his staff as reflected in the Minister's letter to Mr. Mazankowski. Indeed I would be remiss in my duty to allow Mr. Axworthy's description of the company's actions triggering the layoff as being a result of "new technology and new procedures for performing track maintenance functions" to be dispositive of the reasons for the abolished positions. Nevertheless the company's letter does contain several operational changes that signal reasons that might have caused the notice to issue and obviously were not disclosed in the employer's original brief. As a

result I am, with much reluctance, of the view that great doubt has been cast on the persuasiveness of' the company's theory of a cyclical phenomenon of manpower reductions caused by the company's financial situation. Indeed, I am quite satisfied, owing to their reaction at the first hearing, that those company Representatives who prepared the original brief would not have been privy to the correspondence between the Minister and company and union officials.

Apart from Mr. Axworthy's obvious reliance on the company's response his letter does contain information relating to technological change to which the Department of Transport would have first hand knowledge. For example, the Minister stresses in his letter that "the Government of Canada played an important role in purchasing modern machinery to upgrade grain dependent branch lines using railway employees who were members of the Brotherhood of Maintenance of Way Employees." I do not know what specific machinery the Minister was referring to but it seems obvious that if such large scale upgrading did take place the requirement to perform the daily, mundane maintenance functions by the employees who were laid off would be significantly reduced. Moreover the Minister suggests a clearer linkage between such changes and the potential adverse effect on these same employees in the next paragraph of his letter.

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That paragraph refers to the operational changes originally contained in the company's response to the Minister noting CP's "important program of plant improvements and this trend is planned to continue in 1985". Quite clearly the notion of the ?ntroduction of maintenance free equipment and trackage is touched upon and would have over a protracted period an important affect on the company's manpower needs for daily maintenance. In this regard the major fallacy contained in the company's initial and revised briefs is the notion that the introduction of new machinery or an operational change must relate in terms of performance to the employees who are eventually to be adversely affected. For example, it was suggested that because the use of the electronic tamper was reserved exclusively for seasonal or construction gangs who restructured or rebuilt track it would thereby be of no relevance to track maintainers. But if the requirement for the maintenance of such track was significantly reduced because of the use of the electric tamper or like machinery then surely the adverse effect is obvious and inevitable. Or, indeed, the operational changes referred to by the Minister in his own letter as a result of the company's response were discarded as being irrelevant because such matters were not associated with the abolished positions but with seasonal gangs or bridge and building department employees.

Again, such changes or innovations when introduced, perceptibly over a protracted period, would have the long term effect of resulting in "maintenance free" equipment and trackage throughout the company's work environment. Although this clearly has a positive effect on the company's rail operations it would result in a reduction in the volume and type of ordinary daily maintenance work performed by the employees whose jobs were abolished. In other words although there

must be a demonstrable causal link between an alleged technological, operational or organizational change and the adverse effects visited upon the prejudiced employees the operational impact of these changes need not be experienced directly or immediately by these same employees in order to give rise to the entitlements and benefits of Article 8 of the Job Security Agreement.

It suffices to say, in the disposition of this dispute, that I have been satisfied, based primarily on the admissions made by the company, that a case has been established that the abolished positions (of the magnitude herein described) were caused by both technological, and operational changes that were introduced by the company as contemplated under Article 8.1 of the Job Security Agreement. I am simply compelled, in light of the said disclosures, to attach no weight to the cyclical phenomena of manpower fluctuations occasioned by the financial exigencies of the company as being the sole cause of the lay offs. As a result this grievance succeeds.

I shall remain seized with respect to the implementation of this award in accordance with the parties' Joint Statement of Issue.

DAVID H. KATES  
ARBITRATOR.