CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1999

Heard at Montreal, Wednesday, 14 February 1990

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Claim of Conductor A.J. Ressler and crew, Medicine Hat, for payment of 100 miles deadheading from Bassano to Medicine Hat on August 26, 1988.

UNION'S STATEMENT OF ISSUE:

Conductor Ressler and crew were ordered in Straightaway Service on August 25, 1988 at 2200 to work Extra 5851 West, a through train from Medicine Hat to Alyth.

At 2050, August 25, 1988, a mud slide occurred on the Laggan Subdivision, closing the track until approximately 1800 on August 26, 1988.

At approximately midnight on August 25, 1988, a decision was made to set off Conductor Ressler's train at Bassano because it could not be handled in Alyth or West. Conductor Ressler's crew was returned to Medicine hat under Article 11 Clause (c) (2). A further five trains were run through to Alyth from Medicine Hat after Conductor Ressler and crew were turned.

The Union contends that Article 11, Clause (c)(2) was misapplied in this situation and the crew is entitled to 100 miles deadhead from Bassano to Medicine Hat as there was nothing preventing them from yarding their train at Alyth Yard as the line was not blocked.

The Company has declined to pay the 100 mile deadhead ticket the grounds that Article 11, Clause (c)(2) was complied with.

FOR THE UNION:

(SGD) W. M. JESSOP
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. D. Huxtable -- Assistant Supervisor, Labour Relations, Vancouver
B. P. Scott -- Labour Relations Officer, Montreal

And on behalf of the Union:

W. M. Jessop -- General Chairperson, Calgary
I. L. Robb -- Secretary, Calgary
B. Marcolini -- Vice-President, Ottawa
J. R. Austin -- General Chairperson, CP Lines East, Toronto

AWARD OF THE ARBITRATOR

The merits of the instant grievance turn on the application of Article 11(c)(2) of the Collective Agreement which provides as follows:

11(c)(2) Straightaway and Turnaround Service

Trainmen will be notified when called whether for straightaway or turnaround service and will be compensated accordingly. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, locomotive failure, washout, snow blockade, or where line is blocked.

The uncontested facts before the Arbitrator disclose that a mud slide occurred on the Laggan Subdivision at 20:50 on August 25, 1988. As the Laggan Subdivision is west of Calgary, extending between Calgary and Field, B.C., movement on that subdivision was necessarily entirely curtailed pending the clearing of the line. Conductor Ressler's train was scheduled to run on the Brooks Subdivision, from Medicine Hat westward to Calgary. The explanation advanced by the Company, which the Arbitrator accepts, is that in the circumstances it was determined that trains of the highest priority should be permitted to proceed to Alyth Yard at Calgary where they would be ready to move, at the first opportunity, westward on the Laggan Subdivision as soon as conditions allowed. It is not disputed that some five trains with such priority, being "400 Series" trains carrying mixed merchandise, were allowed to proceed across the Brooks Subdivision into Alyth Yard. Bulk commodity trains, being of lower priority, including Extra 5851 West, Mr. Ressler's train which was carrying grain, were diverted to sidings on the Brooks Subdivision pending greater clarification of the situation at Alyth Yard and beyond. The thrust of the Company's actions was to keep Alyth Yard unencumbered by bulk commodity trains, thereby saving the maximum space for the advancement to that point of higher priority freight movements westward.

In the Arbitrator's view there is nothing exceptionable in the decisions taken by the Company for the purposes of coping with the exigencies of the situation then at hand. It was plainly faced with making priority decisions in unforeseen circumstances which involved some urgency. It is clear on the material before me that it did so in good faith and for bona fide business purposes.

The effect of the Company's actions was necessarily to convert the grievor's run from straightaway to turnaround service. This occasioned a loss of earnings to the grievor and his crew, in consequence of which this grievance was filed. The issue becomes whether, as the Company asserts, Article 11(c)(2) was complied with in the circumstances.

It is well established that the decision in respect of the change of service contemplated under that Article is for the Company to make (see CROA 7). The thrust of the dispute before me resides in the Union's submission that the Company had ample time, after the grievor's crew reported for work, and before their movement departed Medicine Hat, to notify them of the change in service. It argues that its failure to do so in those circumstances constitutes a violation of Article 11(c)(2). In this regard, its representative stresses that the mud slide occurred at 20:50, and that Conductor Ressler and his crew were ordered in straightaway service on Extra 5851 West at 22:00 on August 25, 1988.

In the Arbitrator's view the argument advanced by the Union, while logical from its point of view, is not responsive to the language and intention of Article 11(c)(2). That provision deals with the right of the Company to make a change in straightaway or turnaround service for which employees are called. It is, in my view, significant that the exception provided in the article speaks solely and directly to the time of the call, rather than to the time ordered or to any other point in time. The material before the Arbitrator discloses, without dispute, that Conductor Ressler and his crew received their call in respect of straightaway service on Extra 5851 West at 20:15 on August 25, 1988. The mud slide on the Laggan Subdivision did not occur until 20:50, some 35 minutes later. The second sentence of Article 11(c)(2) contemplates that the Company is entitled to change the notification of service in circumstances "... necessitated by circumstances which could not be foreseen at time of call, such as ... where line is blocked." (emphasis added)

In framing the foregoing provision it was open to the parties to determine the cutoff point beyond which the Company could not change the designation of service previously communicated to a train crew. They could, for example, have determined that the order time, or departure time, would be the point at which the knowledge of the Company with respect of unforeseen events is to be assessed. This, however, they did not do. Rather, for reasons which they must best appreciate, they agreed that the unforeseeability of circumstances at the time of a train crew's call would be sufficient to allow the Company to make a change in the designation of service. They did not, moreover, restrict the application of the article to circumstances where the unforeseen event, including a line blockage, must necessarily occur on the same subdivision over which the train crew affected is scheduled to run. Given the lineal continuity of a railway, it is readily understandable why they would not have done so. Events occurring on one subdivision can plainly have an impact on movements over another.

For all of the foregoing reasons the Arbitrator is satisfied that, as the Company maintains, the circumstances of the case at hand fall

within the exception contemplated under Article 11(c)(2) of the Collective Agreement. At the time of Conductor Ressler's call the mud slide on the Laggan Subdivision had not occurred, and could not be foreseen. Its subsequent occurrence reasonably necessitated the prioritizing of movements over the Brooks Subdivision, including the sidetracking of bulk commodity trains and the advancement of the `400 Series' trains to Alyth Yard. On the facts established before me, therefore, the change of service from straightaway to turnaround service of Conductor Ressler and his crew was justified, and there was no misapplication of Article 11(c)(2) of the Collective Agreement.

For these reasons the grievance must be dismissed.

February 14, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR