

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2333
Heard at Montreal, Tuesday, 9 March 1993
concerning
ALGOMA CENTRAL RAILWAY

and
UNITED TRANSPORTATION UNION
EX PARTE

COMPANY'S STATEMENT OF ISSUE:

The dispute concerns the determination of whether or not adequate safety can be maintained with the proposed passenger crew consist reduction and, that such reduction will not result in undue burden being placed on the reduced crew.

FOR THE COMPANY:

(SGD.) J. N. GARDNER

LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

C. W. Peterson

Counsel, Toronto

J. N. Gardner

Labour Relations Officer, Sault Ste. Marie

L. Bertolo

Assistant to Manager, Rail Services, Sault Ste. Marie

G. Lowe

Trainmaster, Sault Ste. Marie

And on behalf of the Union:

G. Watts

Counsel, Toronto

J. Sandie

General Chairman, Sault Ste. Marie

The Arbitrator adjourned the hearing to April 1993.

On Wednesday, 14 April 1993:

There appeared on behalf of the Company:

C. W. Peterson

Counsel, Toronto

J. N. Gardner

Labour Relations Officer, Sault Ste. Marie

L. Bertolo

Assistant to Manager, Rail Services, Sault Ste. Marie

G. Lowe

Trainmaster, Sault Ste. Marie

And on behalf of the Union:

C. Watson

Counsel, Toronto

J. Sandie

General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

This matter falls for consideration under article 69(A) section 2 of the collective agreement. That article provides, in part, as follows:

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(a)

The Company shall notify the General Chairman of the Union, in writing, of its desire to meet with respect to reaching agreement on a reduction in the crew consist provided by Article 69 for crews governed thereby.

(b)

Reductions in the consist of a crew or crews, as the case may be, shall be subject to the two conditions set forth hereunder:

(1)

that adequate safety can be maintained with the proposed crew consist reduction; and

(2)

that such reduction will not result in undue burden being placed on the reduced crew.

...

(e)

If, after completion of the survey period, the Union fails to agree that the two conditions set forth in Rule (b) can be met with the proposed crew consist reduction, they will, within 60 calendar days of the completion of the survey period, give the Company specific reasons, in writing, why, in their opinion, such conditions cannot be met. The Company may, by so advising the General Chairman in writing, refer the dispute or any part thereof to arbitration. The matter has properly been progressed to hearing in this Office, pursuant to the provisions of section 2(f) of article 69(A). At the hearing the Company raised a preliminary issue with respect to whether the Union complied with the requirements of section 2(e). In the Arbitrator's view the Company's position is unfounded. In a letter dated July 17, 1992, the Company asked the Union's General Chairman whether it concurred with the Company's opinion that operating the passenger service with a reduced crew consist would not result in undue burden or any jeopardy to safety of the Company's operations. By letter dated August 7, 1992 the General Chairman, Mr. Sandie, clearly responded in the negative, listing a number of the concerns of the Union with respect to safety and undue burden. In the circumstances, I am satisfied that there was procedural compliance with the requirements of section 2(e) of article 69(A).

I turn to consider the merits of the dispute. The Company seeks arbitral confirmation of its proposal to operate passenger trains 1 and 2 between Sault Ste. Marie and Hearst, as well as passenger trains 3 and 4, which are excursion trains from Sault Ste. Marie to Agawa Canyon, return, on a reduced crew basis. The Company's proposal would remove the brakeman from trains no. 1 and 2 and one of the two brakemen from trains no. 3 and 4. In the case of trains no. 1 and 2, the baggageman and conductor would assume the duties and responsibilities previously performed by the brakeman, while on trains no. 3 and 4, the conductor and remaining single brakeman would cover the duties and responsibilities of the eliminated brakeman.

The principles to be applied in a case of this kind were expressed in prior awards of this Office, where consideration was given to the proposals of railways to reduce crews in passenger service (see CROA 397 & 650). I therefore deem it unnecessary to repeat what is reflected in those awards.

I consider firstly the proposal for reduced crews in the service of trains no. 1 and 2. The evidence before me discloses that ridership has declined in the last ten years, and that trains 1 and 2 usually run with two passenger coaches. Since the introduction of the Radio Communication System and the Occupancy Control System (or block system) of train movement, crew members are able to communicate with each other and with the rail traffic controller at all times with the aid of portable radios which they carry. There is no longer a requirement for a brakeman to be positioned at the tail end of the train, although the conductor or trainman on board is called upon to inspect the track occasionally, when his or her regular patrol of the train causes him or her to be at the tail end.

From the standpoint of safety, the Arbitrator can find no evidence of substance to support the concerns of the Union, as regards the operation of a reduced crew in trains 1 and 2. Because conductors, baggagemen and brakemen are cross-trained, there is no difficulty with employees in those classifications assisting each other in their duties, as required. While it is true that the elimination of one position will increase the work of the remaining crew members, the evidence before me does not establish that the work in question cannot reasonably be accomplished without compromising safety. The evidence gathered in the course of the survey period would suggest that the supervisory functions of the conductor, his communications with the rail traffic controller, record keeping, responsibilities in respect of ticketing and bookkeeping, his communications with the engineer and involvement in switching, as well as in entraining and detraining passengers can indeed be accomplished safely within a reduced crew setting. Similarly, the responsibilities of the baggageman in respect of handling and documenting baggage, and the duties of the brakeman, as they relate to switching, coupling hose bags, work in relation to the steam lines, the closing and opening of doors, the placing of foot stools and overall vigilance in relation to the safety and integrity of equipment can, as well, be performed without hazard on trains 1 and 2 in the context of a reduced crew.

During the course of the hearing the Arbitrator had some concern with respect to the time which the assignment would take, to the extent that it might impact on the state of rest and overall alertness of the employees. In the end, however, I must accept the submission of Counsel for the Company that in that respect the employees are fully protected by the provisions of article 49, which give them an absolute right to book rest when they have been on duty eleven hours or more. It is common ground that the duration of assignments with full crews on trains 1 and 2 has traditionally been in the order of ten and one-half hours. Even if one accepts, as the Union submits, that a reduced crew will extend the operation beyond eleven hours, a proposition which still remains doubtful on the evidence before me, the fact remains that the employees have the unconditional right to book rest. Should there be any significant problem in this regard, the Company will be required to make scheduling adjustments which will allow reduced crews to operate in a manner consistent with the rest provisions of article 49 of the collective agreement.

Nor am I persuaded that there is any undue burden on the members of a reduced crew in the operation of trains 1 and 2. For the reasons touched upon above, the employees are trained in the functions to be performed, and are able to be of assistance to each other in all aspect of their duties and responsibilities. I share the Union's view that the minute-by-minute analysis of tasks performed presented by the Company, based on the survey period, is to some extent misleading, as it fails to take into account the ongoing responsibility of the crew members in respect of general vigilance, and anticipation of events in relation to the movement of their train. I am, nevertheless, satisfied that they can perform all of their duties and responsibilities without undue stress or burden in the circumstances which attach to the assignment of trains 1 and 2. I have reservations, however, as regards the operation of trains 3 and 4. The material before me establishes, beyond contradiction, that during peak season trains 3 and 4 can carry up to 1,500 passengers and can consist of as many twenty- two passenger coaches. It is instructive, in my view, that article 69 of the collective agreement makes mandatory provision, in passenger service, for an additional crew member if eight or more passenger cars are handled, and still one further crew members if more than twelve cars are used. However, to the extent that it may be viewed as a safety measure, that article applies only to regular passenger service, and has no application to excursion trains, such as trains 3 and 4.

The Arbitrator appreciates that trains 3 and 4 are manned, in part, by tour hostesses, tourism counsellors and, in the summer time, an electrician. It would also appear that they do not involve baggage service or the station stops common to regular passenger service. However, from the standpoint of train operations, it is difficult to avoid residual concerns about the overall safety of a train carrying in excess of one thousand passengers in as many as twenty passenger cars, being manned only by a conductor and a single brakeman/flagman. In the absence of better evidence, I am not persuaded that the normal obligations of patrolling so extensive a consist, with due allowance for all of the other duties and responsibilities of the conductor and brakeman, including ticketing, entraining and detraining passengers and the overall supervision of the movement of the train can be performed safely on the basis of a reduced crew.

In coming to that conclusion, part of the difficulty is the weight that can be given to the findings of the survey period. While it is true that no difficulties were encountered during the survey period, it is noteworthy that the survey was conducted in June, when ridership on the Agawa Canyon train is low, averaging approximately 280 passengers per trip. Bearing in mind that the duties and responsibilities of the conductor extend to the overall comfort and safety of passengers, in addition to ticketing and bookkeeping functions in relation to them, and having regard to the provisions of article 69 which mandate the increase of crews in regular passenger service when the number of cars exceed eight or twelve, I am left in substantial doubt as to the overall safety of a reduced crew operation of an excursion train which, during peak season periods, can consist of substantially more than twelve cars, sometimes numbering more than twenty. Given the sheer number of passengers involved in the tour train service, I am also left in some doubt as to whether there is not an inevitably undue burden placed upon the conductor and the single brakemen/flagman in that circumstance.

It should be stressed that the Arbitrator bases the foregoing conclusions on the case as presented. Nothing in the case at hand should be taken as limiting the right of the Company to establish the appropriate conditions for operating excursion trains with reduced crews, during all or part of the year, in a manner than conforms to the requirement of adequate safety, and in a way that does not result in an undue burden being placed upon the reduced crew, as contemplated under section 2(b) of article 69(A) of the collective agreement.

For the foregoing reasons the application of the Company is allowed, in part, and dismissed in part. The Arbitrator finds and declares that the operation of trains no. 1 and 2, on the basis of a reduced crew, does meet the condition of adequate safety and will not result in undue burden being placed upon the reduced crew. The proposed reductions in respect of trains 1 and 2 may, therefore, be implemented consistent with the provisions of article 69(A) of the collective agreement.

However, for the reasons related above, the Arbitrator cannot find or declare, on the basis of the evidence presented, that the operation of trains 3 and 4 on a reduced crew basis can be accomplished in a manner that meets the two conditions set forth in Rule (b) of section 2 of article 69(A).

April 16, 1993

MICHEL G. PICHER
ARBITRATOR