

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 131

Heard at Montreal, Tuesday, November 12th. 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Failure to agree on a yard crew consisting of one Foreman and one Helper on the 7.00K Tramp assignment at Alyth (Calgary).

JOINT STATEMENT OF ISSUE:

Article 9, Clauses (b), (c) and (d) of the Yard Agreement reads:

(b) Should the Company desire to abolish one helper position in any yard or transfer crew on which two helpers are employed in accordance with Clause (a) hereof, the Company shall notify the Local and General Chairman of the Brotherhood in writing of its desire to meet with respect to reaching agreement on a crew consist of one yard foreman and one yard helper. The time and place, which shall be on the Region concerned, for the Company and Brotherhood representatives to meet shall be agreed upon within twenty-one calendar days from the date of such notice and the parties shall meet within thirty calendar days of the date of such notice. It is understood, however, that if the number of cases to be handled at any particular time make the time limits specified herein impractical, on request of either party, the parties shall mutually agree on a practical extension of such time limits.

(c) The determination of whether or not the proposed crew consist reduction shall be made will be limited to and based on maintenance of adequate safety. If the parties do not reach agreement at the meeting referred to in Clause (b) the Company may, by so advising the Local and General Chairman in writing, commence a survey period of five consecutive working days for the yard operations concerned during which Brotherhood Representatives may observe such operations. The survey period shall commence not less than ten and not more than twenty calendar days from the date of the Company's advice with respect to the survey period. The Local and General Chairman shall be advised of the results of the survey.

(d) If, after completion of the survey period, the parties do not agree on the proposed crew consist reduction, the General Manager may by so advising the General Chairman in writing, refer the dispute to the Canadian Railway Office of Arbitration for determination.

Notice was served on the Local and General Chairman of the Brotherhood of Railroad Trainmen by the Company of its desire to implement a two-man yard crew on the 7.00K 'A' Tramp assignment. A meeting was held in Calgary on March 7th between the Superintendent for the Company and Local Chairman for the Brotherhood at which time no agreement was reached on the proposed crew consist reduction. The survey thereupon required was conducted covering the period April 9th to April 31st inclusive with the Local Chairman observing the operation on behalf of the Brotherhood.

It is the contention of the Company that the survey revealed adequate safety, stipulated in Clause (c) as the determining factor in reducing crew consists, can be maintained on the assignment in question with a crew consist of

a yard foreman and one yard helper. The Brotherhood contends that adequate safety can not be maintained on this assignment with a reduced crew consisting of a yard foreman and one yard helper and has declined to agree with the proposed crew consist reduction.

FOR THE EMPLOYEES:

(Sgd.) S. McDONALD
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) R. S. ALLISON
GENERAL MANAGER – PACIFIC REGION

There appeared on behalf of the Company:

J. G. Benedetti – Supervisor Personnel & Labour Relations, Vancouver
D. G. Stewart – Assistant Superintendent, Calgary
R. W. Stuckert – Acting Assistant Superintendent, Calgary
M. Stroick – General Yardmaster, Calgary
J. Ramage – Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

S. McDonald – General Chairman, Calgary
P. P. Burke – Local Chairman, Calgary

AWARD OF THE ARBITRATOR

The company seeks the reduction of the three-man crew heretofore used on the assignment referred to, to a two-man crew. While the joint statement of issue sets out clauses (b), (c) and (d) of Article 9 of the collective agreement, reference may be made to clause (a) of article 9, which provides as follows:

- (a) A yard crew shall consist of not less than a foreman and one helper in the following yard:
Yorkton (one assignment)

In all other yards a yard crew shall consist of not less than a foreman and two helpers except as provided hereunder. Yardmen will not be required to work with less than a full crew as specified.

This provision makes it clear that yard crews will, in general, consist of a foreman and two helpers. Where the company seeks to operate with a smaller crew in any particular case, then it must obtain the agreement of the Brotherhood, or failing such agreement, establish in proceedings before the Arbitrator that the proposed reduction may be made with maintenance of adequate safety. In the instant case, the Brotherhood has not agreed to the proposed reduction. There are before me the survey reports of the persons who conducted the surveys required by article 9 (c), and it is on the basis of these, as well as upon a consideration of the representations made at the hearing, that I must determine whether or not the company's case has been made out.

It may be observed that in this case (and the same is true of cases **A-130** and **A-132**), there is no evidence to show that there has been any change in the underlying circumstances which were in existence at the time the provisions of article 9 were agreed to. It was not suggested that there has been any substantial change in the work to be done, in working methods, or in the equipment used. The only change in equipment referred to was a modification in certain cars which prevents yardmen from taking positions on the top of cars. Such a change would, if anything, be a reason for retaining the three-man crew rather than reducing it. There is, in any event, no particular occasion which would call for the reduction of the crew required by the collective agreement. The agreement of course does contemplate that reduced crews may be sought in some instances, and the question must be determined having regard to the particular circumstances of each case. The general remarks set out in **case number 130** apply equally here.

The assignment with which I am concerned here performs a variety of switching duties in the company's Alyth Yard, including the following:

- (1) Spotting of piggyback and multi-level traffic off arriving trains to the various unloading ramps located in the area of Mile 174.0, Brooks Subdivision.
- (2) Shoving operations mainly in "O" Yard classification tracks;
- (3) Assembling or completing trains by placing loads and empties on trains in "P" Yard;

- (4) Placing loads at industrial trackage in the immediate area of Alyth Yard;
- (5) Switching service to Burns and Company, Calgary Packers and the Alberta Stockyards located to south-west of Alyth Yard;
- (6) Weighing carloads of revenue traffic on Alyth scale in the centre of Alyth Yard. The crew works under the supervision of the Train Co-Ordinator – Alyth Yard.

The survey reports indicate that the tree-man crew was, in general, fully occupied throughout the assignment, and it may be noted that on certain occasions overtime work was required. As to many of the train movements on which all three crew members were used, it was said by the company that these movements could have been performed safely with two men. Whether this could be done, however, depends not merely on the manner in which the foreman positions his crew, but also on other variable factors, such as the nature of the equipment and the availability of track. It was not suggested that the three-man crew was improperly positioned, now was it suggested that the work was performed inefficiently. While it is safety and not efficiency which is the criterion by which the case is to be determined, the fact is that the two are interrelated. Without doubting the correctness of the company's analysis of certain moves made during the survey period, a substantial doubt remains, after considering all the material before me, that the two men could have performed the work there described.

In considering the matter, I have noted particularly the variety of work performed and the areas in which it is done, the existence of public crossings, and the degree of activity of the crew as revealed in the survey reports.

As I have indicated above, there is an onus on the company, in a matter arising under article 9, to show that the assignment in question may be performed safely by a reduced crew. It must be remembered that this demonstration must be made in the face of an agreement that there be a three-man crew and, in this case, without reference to any change of circumstances. Having regard to all of the material before me, I am not persuaded that adequate safety can be maintained on this assignment with a crew consisting only of a yard foreman and one yard helper.

Accordingly, the company's request must be denied.

(signed) J. F. W. WEATHERILL
ARBITRATOR