

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 221

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

The Applicability of Article 47 of the Collective Agreement applicable to Trainmen with respect to the use of ground-to-cab radios by Yardmen at Alyth Yard, Calgary.

JOINT STATEMENT OF ISSUE:

Article 26 of the Yard Rules reads:

MATERIAL CHANGE IN WORKING CONDITIONS.

The provisions of Article 47 of rules applicable to trainmen also apply to yardmen and switchtenders.

The Union alleges that the use of ground-to-cab radios will have materially adverse effects on yardmen at Calgary and is, therefore, a material change in working conditions as specified in Section 1, Clause (a), Article 47 of Collective Agreement.

The Company denied the grievance on the grounds that the use of radios at Calgary does not have materially adverse effects on yardmen and is not, therefore, a material change in working conditions as set out in Section Clause (a), Article 47 of the Collective Agreement. The provisions of Article are, therefore, not applicable in respect of the introduction of ground-to-cab radios at Calgary. Section 1, Clause (a) of Article 47 reads as follows:

(a) 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 employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article.

The Union has progressed this matter as a grievance in accordance with the provisions of Clause (m), Section 1, Article 47 of the Collective Agreement which reads as follows:

(M) A dispute concerning the applicability of this Article to a change in working conditions will be progressed as a grievance by the General Chairman direct to the General Manager, and must be presented within 60 days from the date of the cause of the grievance.

FOR THE EMPLOYEES:

(SGD.) R. T. O'BRIEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. T. RILEY
REGIONAL MANAGER, PACIFIC REGION

There appeared on behalf of the Company:

J. G. Benedetti – Supervisor Personnel & Labour Relations, Vancouver
R. Colosimo – Manager Labour Relations, Montreal
D. G. Stewart – Superintendent Calgary Division,

And on behalf of the Brotherhood:

R. T. O'Brien – General Chairman, Calgary
P. P. Burke – Vice Chairman, Calgary

C. McCaw

– Local Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The issue arises from the Company's announced intention to introduce ground-to-cab radios for use in their work by yard crews at Alyth Yard. A radio would be carried on the person of each employee, used in the course of his work, and returned to the custody of the Company at the end of each shift. No doubt the carrying of these radios, their use in operations, and the responsibility for them could properly be said to constitute changes in working conditions, but the question is whether they are "material changes" which would have "materially adverse effects" on the employees.

Article 47(1)(1) provides that article 47 itself does not apply in certain cases, including "traditional reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged". The question whether article 47 does apply is a question which may be raised as a grievance, and, as here, may ultimately proceed to be disposed of in the Canadian Railway Office of Arbitration. If it is held that article 47 does apply, then any issues relating to the minimizing of the adverse effects of the change may be resolved ultimately by arbitration under the procedure set out in article 47(1)(e).

In some respects, as the Company points out, the introduction of radios may have beneficial effects, for example in making the work of yardmen easier in certain ways. At the same time, no doubt, as the Union points out, they may be considered as having adverse effects, as being cumbersome, an added responsibility, requiring a new technique, and so on. These considerations are not, in my view, particularly helpful in resolving the question whether the change is a material one, or will have materially adverse effects on employees. The motion of a "material" change, or of "materially adverse" effects is question-begging, for the question which must first be resolved is: material to what? The answer to this question can only be determined upon a consideration of article 47 as a whole. What are its purposes, and what sort of matter does it contemplate as material to its operation? In the context of article 47, it must be said that a material change is one which leads to situations for which the procedures of that article are properly invoked. It is apparent at a glance that article 47 contemplates some substantial dislocation of employees with respect to their work, as to time, place or fundamental character. Thus, article 47(1)(c) provides as follows:

- (c) While not necessarily limited thereto, the measures to minimize adverse effects considered negotiable under paragraph (b) above may include the following:
- (1) Appropriate timing.
 - (2) Appropriate phasing.
 - (3) Hours on duty.
 - (4) Equalization of miles.
 - (5) Work distribution.
 - (6) Adequate accommodation.
 - (7) Bulletining.
 - (8) Seniority arrangements.
 - (9) Learning the road.
 - (10) Eating enroute.
 - (11) Work enroute.
 - (12) Lay-off benefits.
 - (13) Severance pay.
 - (14) Maintenance of basic rates.
 - (15) Constructive miles.
 - (16) Deadheading.

The foregoing list is not intended to imply that any particular item will necessarily form part of any agreement negotiated in respect of a material change in working conditions.

The use of the ground-to-cab radios would certainly affect the manner in which work is performed by yard crews. The change in method made possible by the use of radios will, it is contemplated, lead to changes in staffing of yard crews, at least in some instances. That is to say, there may be reductions in yard crews and employees displaced as a result of the introduction of ground-to-cab radios. The Company does not contemplate any reduction

of assignments: it is the staff of the crews performing the assignments which may be reduced. For example, an assignment now carried out by a crew of three may in future be carried out by a crew of two.

The determination to reduce the size of the crew on any assignment is one which can be made only pursuant to article 9 of the yard rules, attached to the collective agreement. That article sets out the procedure to be followed in making the determination that a crew is reducible, and the rights of employees affected by such a determination. It was the position of the Company that the question of reductions in yard crew, being dealt with in article 9 of the yard rules, was not one that could be dealt with under article 47. In this, the Company relies on article 47(1)(1), referred to above, which is as follows:

- (1) 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 reassignment of work or other normal changes inherent in the nature of the work in which employees are engaged.

While a reduction in the size of a yard crew may be made pursuant to article 9 of the yard rules, it is not the sort of “normal” change referred to in article 47(1)(1), and does not involve the sort of everyday application of the collective agreement there contemplated. Where a change in working conditions creates a situation in which it may be possible to reduce the size of a number of yard crews, it surely must be said that such a change is a “material” change within the meaning of article 47, in that it leads to adverse effects on employees of a sort which may be minimized by measures such as those set out in article 47(1)(c). For this reason it is my conclusion that the introduction of ground-to-cab radios is a material change in working conditions, and that it will have materially adverse effects on employees.

Article 9 of the yard rules deals with the matter of determining whether a crew is reducible, and with the rights of employees in such cases. It does not, however, displace article 47 in such cases. The reduction in size of a particular crew may or may not be the result of a material change in working conditions. The questions which arise under the two provisions are quite distinct. In the instant case, a change is proposed which quite properly calls for the sort of negotiations called for by article 47. In those negotiations the parties may have to take into account the rights of employees under article 9 of the rules, and it may be that the determinations necessary under article 9 would need to be made before the measures to be taken under article 47(1) could be finally determined, but it nevertheless remains that the contemplated change in working conditions is a material change, having adverse effects on certain employees.

It is accordingly my conclusion that the introduction of ground-to-cab radios in the operations referred to would indeed constitute a material change in working conditions, and that the negotiations referred to in article 47(1)(c) should be held for the purposes of minimizing the adverse effects of such change on the employees who are affected thereby.

(signed) J. F. W. WEATHERILL
ARBITRATOR