

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 223

Heard at Montreal, Wednesday, June 10th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Failure to agree on a yard crew consisting of one Foreman and one Helper on the 0530 Yard Assignment – Job IL8 – at Winnipeg.

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 Union 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 Union 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 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 Union 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 Union Representatives oppose the implementation of a two-man crew, such representatives will identify the specific moves which cannot, in their opinion, be performed safely with two men and the reasons therefore. If agreement cannot be reached by parties 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 upon the Local and General Chairman of the United Transportation Union (T) by the Company of its desire to implement a two-man yard crew on the 0530 Yard Assignment – Job 1L8 – at Winnipeg. A meeting was held on October 2, 1969, between the Superintendent for the Company and the Local Chairman for the Union, at which no agreement was reached on the proposed crew consist reduction. The Company then served notice on the Union that a survey period of 5 consecutive working days, October 14th to 18th inclusive, 1969, would be conducted. This was done with the Local Chairman observing the operation on behalf of the Union.

The results of the survey and supporting data were provided to the Local and General Chairman, with the Company contention that the data supported its view that adequate safety, stipulated in Clause (c) as the determining factor in establishing a crew consist reduction, could be maintained on the assignment – Job 1L8 – with a crew consist of one yard foreman and one yard helper.

Union Representatives have opposed the Company's request for implementation of a two-man crew on this assignment and in support of their position, on request by the Company, have identified specific moves which cannot, in their opinion, be performed safely with a two-man crew on the following tracks:

'I' lead, K27, K31, L21, L21A, L31, L35, L35A, L55, L57, L63 and M41.

FOR THE EMPLOYEES:

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

FOR THE COMPANY:

(SGD.) W. J. PRESLEY
REGIONAL MANAGER, PRAIRIE REGION

There appeared on behalf of the Company:

P. A. Maltby	– Supervisor Labour Relations, Winnipeg
R. Colosimo	– Manager Labour Relations, Montreal
J. Ramage	– Special Representative, Montreal
M. Solomon	– Deputy General Yardmaster, Winnipeg
J. Hastings	– Assistant Analyst, Winnipeg
F. Wise	– Supervisor industrial Engineering, Vancouver
B. Corson	– Supervisor Industrial Engineering, Winnipeg

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 Company seeks the reduction of the three-man crew heretofore used on the assignment in question, to a two-man crew. By article 9(a) of the yard rules, yard crews are to consist generally of not less than a foreman and two helpers. A reduced crew is permissible under article 9 where it is shown the reduction can be made with maintenance of adequate safety. As was indicated in **Cases 130, 131 and 132**, there is an onus on the Company to show that the assignment in question may be performed safely by a reduced crew. Since those cases were decided, article 9(d) has been amended, and provides, as set out above, for the specification by the Union of specific moves which cannot, in their opinion, be performed safely with two men. It would appear that the determination of the matter is to be made having regard particularly to these specific moves. It seems clear as well that the particular circumstances to be considered, and against which the submissions of the parties are to be evaluated, are those set out in the survey conducted pursuant to article 9(c) of the yard rules, set out above. In the instant case, upon the request of the parties, I took a view of certain of the sites in question and observed a part of the operations of the crew carrying out this assignment. This was for the purpose of better understanding the material before me and of the general background of the work. It bears repeating that the matter is to be decided upon a consideration of the survey, and of the representations of the parties with respect to it.

In opposing the implementation of a two-man crew on this assignment the Union referred to the difficulties which, in its opinion, would be encountered at a number of industrial sidings where the assignment worked. Although these objections did not refer to the detail of each particular car movement, they did refer to the operations with sufficient particularity to identify the problems arising at each site, and in my view this was sufficient compliance with the requirements of article 9(d) of the yard rules. The operations in question are those performed on the tracks referred to in the joint statement of issue.

Job IL8 operates in the South Side Industrial Area of Winnipeg Terminal. It performs switching in "I" Yard and "South-West" Yard, and provides service to a number of industries, located mostly on "K" and "L" leads. During the period of the survey long cuts of cars were not handled. In the event of reduction in crew size, the number of cars which could be handled at one time would, in some moves, be reduced. This is particularly so at some of the industrial sidings. The particular movements referred to in the joint statement of issue have been considered in detail, and it is my conclusion that they could be performed safely by a crew of two. There is no doubt, however, that in some cases this would involve a change in method, the handling of fewer cars at a time, and some loss of productivity. In the award in **Case No. 131**, it was said that 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. Where as a result of crew reduction certain operations can only be performed with safety in a grossly inefficient manner, then it may be doubted whether

the assignment is really the same. Where reasonable modifications in methods allow a reduced crew to perform the same work safely with only a moderate loss of productivity, then the case for a reduction of crew size under article 9 must be said to have been made. It is my conclusion that this is so in the instant case.

During the survey period, much of the switching on "I" lead was done using two men, and the work done during that period was done safely. Switching on tracks K-27 and K-31, servicing the Manitoba Bridge and Engineering works can be done with two men, where the cars being switched are limited in number. In the case of gondolas or flat cars, four cars may safely be moved by a two-man crew. In the case of cars higher than a gondola, they must be placed separately. This sort of movement would be quite practical having regard to the nature of the area and volume of traffic. Switching on tracks L-21 and L-21A, servicing the Canada Malting Co., would perhaps create the greatest difficulties for a two-man crew of any of the sites covered by the survey. Nevertheless, it is my conclusion that a reduced crew could perform the work safely, provided (as the Company acknowledges), cars standing on track A-23 were removed, so that sightlines could be maintained. This is one of the areas where a revised switching method was devised by the Company, and I am satisfied that such method could be used safely.

On track L-31, work was performed safely using two men, the third member of the crew remaining at the Myrtle Street crossing. It does not appear that he was performing any required function at the time. Again, on tracks L-33 (serving Christie Brown and Co.), L-35 and L-35A, I am satisfied that the necessary switching could be performed by a two-man crew, using the revised methods suggested by the Company.

Tracks L-55 and L-57 are dead end tracks running almost parallel to each other, serving the Muirhead Forwarding Ltd. warehouse. Track L-57 runs along the side of the warehouse; at the west end of the warehouse is an open platform which is curved in conformity with the track curvature. When cars are spotted along the side of this platform they can obscure the line of sight between the warehouse and the engineman on the lead. If a two-man crew is to be used, a revised method of switching is necessary which requires the removal of cars spotted at the platform. The situation is in some ways similar to that encountered at the tracks serving the Canada Malting Company.

In this case as well I am satisfied that the revised method can accomplish the work safely. This was in fact done during the survey period.

The movements on track L-63 pose no particular difficulty in themselves. The Richard Ave. crossing must be protected in the usual way, but I cannot find in that situation any requirement for a three-man crew. Track M-41 is a single track serving the John Woods Co. Ltd., which curves off from the lead for about 500 feet, and then proceeds straight ahead for about 1150 feet into a warehouse. Cars are pushed along this track, and with the engine at the rear, the engineman, riding on the right-hand side of the cab, cannot receive signals from the ground because the track curves to the left. The revised method of switching involves one of the crew being stationed in the cab, on the left-hand side, in order to receive signals and pass them to the engineman. There is no doubt that two men can control the movement safely using this method. I can see no contradiction between the Company's establishing this method of switching and its position taken before the Kellock Royal Commission as to the necessity for firemen. Firemen are no part of the yard crew, and the question is simply whether the yard crew may be deployed in such a manner as to control the movement safely with two men. There is no rule preventing a member of the yard crew from riding in the cab for this purpose.

Upon a review of the specific moves referred to in the joint statement of issue, and a consideration of the assignment as a whole, it is my conclusion that it may be safely performed by a crew of two. Such safe performance will require the use of revised switching methods in the situation referred to and perhaps elsewhere. Members of the crew must of course comply with the Uniform Code of Operating Rules and other regulations. With a reduced crew, there may well be occasions where, as a result, the work in question cannot be performed as efficiently as with a three-man crew. Further, the effects of inclement weather, or winter conditions, may be more noticeable if a reduced crew is used. The question before me is simply whether the work can be performed safely with a reduced crew, and it is my conclusion on the material before me, that it can.

It is accordingly my award that the request of the Company be granted.

(signed) J. F. W. WEATHERILL
ARBITRATOR