CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 228

Heard at Montreal, Tuesday, July 14, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Whether or not notice of cancellation of trains 301–302 and 305–306 was required to be given to the Brotherhood.

JOINT STATEMENT OF FACTS:

Effective October 26, 1969, trains 301–302 and 305–306 between Calgary and Edmonton were cancelled. The cancellation resulted in five employees being reassigned to different positions – one at an increased rate of pay and four at lower rates of pay. The Brotherhood contends the Company violated Clause 1 of Article VIII of the Job Security Agreement of January 29, 1969 when it did not serve the notice specified in such clause. The Company contends that such Clause 1 has no application in this instance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. WELCH	(SGD.) R. T. RILEY
GENERAL CHAIRMAN	REGIONAL MANAGER, OPERATION AND MAINTENANCE, PACIFIC REGION

There appeared on behalf of the Company:

W. E. McBride	– Assistant Vice-President Industrial Relations, Montreal
J. B. Chabot	– Assistant Manager Labour Relations, Montreal
J. G. Benedetti	– Supervisor, Labour Relations, Vancouver
D. Cardi	– Labour Relations Assistant, Montreal
P. E. Timpson	– Labour Relations Assistant, Vancouver
G. Sheppard	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

R. Welch	– General Chairman, Vancouver
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

Clause 1 of Article VIII of the Job Security Agreement provides as follows:

> **1.** The Company will not put into effect any technological, operational or organizational change of a permanent nature which will effect a material change in working conditions with adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the union concerned to receive, such notices. In any event, not less than three months notice shall be given if relocation of employees is involved, and two months' notice in other cases, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

The question which arises in this case is whether the cancellation of trains 301–302 and 305–306 constituted a "technological, operational or organizational change of a permanent nature", such as would call for the giving of notice to the union under Clause 1 of Article VIII. This provision, it may be noted, gives certain benefits to employees in excess of those otherwise provided under the collective agreement. In particular, it is to be observed that Clause 1 of Article 8 provides for a substantial period of notice which may be contrasted with Article VII of the, wage increase, etc., agreement which calls for not less than four working days advance notice to be given "when regularly-assigned positions are to be abolished". Now the abolition of a position is in a narrow sense a change of "operations", but it is clear that such a change is not necessarily an "operational" change of the sort referred to in Clause 1 of Article VIII of the job security agreement.

In **Case No. 221** it was held that the introduction of ground-to-cab radios in the CPR yard at Alyth constituted a "material change in working conditions" within the meaning of the collective agreement there in issue. That agreement was generally analogous to the present agreement, and it might be said, in the terms of the present agreement, that such a change would constitute a "technological, operational or organizational change" within the meaning of Article VIII. That situation, of course, was of a very different sort from the one in issue here, and the case is not of assistance in this matter.

In **Case No. 101** similar collective agreement provisions were involved, although the parties again were different. In that case the company posted a schedule showing two separate starting points for a pool operation which had formerly been covered by crews from the one point. It was considered by the arbitrator that there was an "operational change" within the meaning of the collective agreement, and further there was nothing to support a claim that the case came within certain exceptions relating to a "general decline in business activity". In the instant case the change instituted by the company did not involve such a matter as a change in starting points or other comparable change in operations or organization, but was simply a cancellation of certain work: a reduction in the level of operations. The case is distinguishable from **Case No. 101** in this regard. In addition however, there is material before me in the instant case to show that the reduction in operations was in fact the result of a very substantial reduction in passenger traffic between Edmonton and Calgary during several years preceding the company's actions.

Clause 5 of Article VIII provides as follows:

> **5.** The terms Technological, Operational and Organizational change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments.

What occurred in the circumstances of this case was, in my view a change brought about by "fluctuation of traffic". The company's response to the decline in traffic included a reduction in the level of service, effected by cancelling the trains in question. While it may be debatable whether this change constituted an "operational" change within the meaning of Clause 1 in any event, in the instant case the change did not come within that term because of the express provision of Clause 5. It was not, therefore, incumbent on the company to serve notice under Clause 1.

For the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR