

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 295

Heard at Montreal, Tuesday, July 13th, 1971

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Failure to agree on reduced passenger train crew consist, by the elimination of the head-end brakeman on passenger trains No. 1 and No. 2, No. 11 and No. 12 (The Canadian) on the four assigned runs as follows:

1. Between Ottawa and North Bay
2. Between North Bay and Chapleau
3. Between Chapleau and Thunder Bay
4. Between Toronto and Sudbury

COMPANY'S STATEMENT OF ISSUE:

Article 5, Clause (b), Subsections 1, 2, 3 and 4 of the Collective Agreement read:

(b) 1. Should the Company desire to reduce the consist of any passenger train crew it shall notify the Local and General Chairman of the Union in writing of its desire to meet with respect to reaching agreement on a reduced crew consist. The time and place, which shall be on the Region concerned or where runs extend over more than one region on one of the regions 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 time limits.

2. 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 and that the reduced crew consist will not result in undue burden being placed on the members of the reduced crew.

3. If the parties do not reach agreement at the meeting referred to in Subsection (1) the Company may, by so advising the Local and General Chairman in writing, commence a survey period of one week of the operations concerned during which the Union representatives may observe such operations. The survey 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.

4. If, after completion of the survey period, the Union representatives oppose the implementation of a reduced crew consist, such representatives will identify the specific circumstances where, in their opinion, with a reduced crew consist adequate safety could not be maintained or that an undue burden would be placed on the members of the reduced crew and the reasons therefor. If agreement cannot be reached by the 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.

Notices were served upon the respective Local Chairmen and the General Chairman of the United Transportation Union (T) by the Company of its desire to reduce passenger train crew consist by elimination of the head-end brakeman on each of the four passenger train assigned runs operating on Eastern Region as follows:

1. Between Ottawa and North Bay
2. Between North Bay and Chapleau
3. Between Chapleau and Thunder Bay
4. Between Toronto and Sudbury

The meeting required by Subsection (1) were held on the various territories between the Superintendent's for the Company and the Local Chairman for the Union, at which time no agreement was reached on the proposed crew consist reduction. The Company then served the notice required by Subsection (3) upon the respective Local Chairmen and the General Chairman, of commencement of a survey period of one week on the respective runs, to be conducted at varying times on the Eastern Region. In each survey, the Local Chairmen observed such operations on their respective territories.

The results of each survey were provided to the General Chairman, with the Company contention that the data supported its view that adequate safety could be maintained with a reduced crew consist and that no undue burden would be placed upon the members of the reduced crew, stipulated in Subsection 2 as the determining factors in establishing a crew consist reduction.

Union representatives have opposed the Company's request for a reduced passenger train crew consist on each of the four assigned runs between Ottawa and Thunder Bay, and between Toronto and Sudbury. In support of their position, on request by the Company, they have identified, in general, circumstances where, in their opinion, with a reduced crew consist (by elimination of head-end brakeman) adequate safety could not be maintained or undue burden would be placed upon members of the reduced crew. These circumstances are:

- (a) The head-end brakeman is required to assist the Train Conductor in entraining, detraining, seating, ticketing and hat checking of day coach passengers and must visually check at each station stop to ensure all sleeping car passengers are entrained.
- (b) The head-end brakeman is required to assist other train crew members with the conduct of train patrols and running inspections and inspections of trains met or passed enroute.
- (c) The head-end brakeman is required to assist in the conduct of No. 2 (Intermediate Terminal) air brake test, when necessary.
- (d) The head-end brakeman must line switches to allow his train to enter and leave siding at Ashton when meeting Train No. 2, and inspect Train No. 2 as it passes. In Winter it is sometimes necessary to remove snow from switch points before lining switches.
- (e) The head-end brakeman must deliver register tickets to Operators at Carleton Place and Romford.
- (f) Head-end brakeman is required to shut off steams when valves close automatically, stop train, to allow crew members to check valves, locate problem and correct it.
- (g) The head-end brakeman is required to assist in the event of train accidents, hot boxes, setting off defective passenger cars and in transfer of passengers to alternate cars.
- (h) The head-end brakeman is required to afford assistance in the control of inebriated or otherwise impaired and unruly passengers, when necessary.
- (i) The head-end brakeman is required to carry out certain incidental functions when necessary to ensure the comfort and convenience of passengers, such as call station stops, give information to passengers, check to ensure hand baggage safely stored in over-head baggage racks, setting light and temperature controls for night and day operation etc. and proceed to sleepers to lift baggage checks from those passengers who are detraining at points where no station staffs are on duty and deliver them to train baggageman.
- (j) The head-end brakeman is required to be in position to observe the regulations specified in the Uniform Code of Operating Rules, including compliance with Rules 264, 509 and 104B; Form CS 44 and Special Instructions, to ensure the safe operation of the train.

FOR THE COMPANY:

(SGD.) J. D. BROMLEY

REGIONAL MANAGER, OPERATION AND MAINTENANCE, EASTERN REGION

There appeared on behalf of the Company:

J. G. Dow – Supervisor of Personnel & Labour Relations, Toronto
D. D. Wilson – Labour Relations Officer, Montreal
R. Colosimo – Manager Labour Relations, Montreal
J. Ramage – Special Representative, Montreal
P. A. Maltby – Supervisor Labour Relations, Winnipeg
C. King – Assistant Regional Rules Instructor, Toronto
H. Grant – Assistant Supervisor Labour Relations, Toronto

And on behalf of the Brotherhood:

L. H. Breen – General Chairman, Montreal
J. Callaway – Special Representative, Ottawa
A. W. Crate – General Secretary of General Committee, E&A Regions, Montreal

AWARD OF THE ARBITRATOR

Article 5(b)(4) of the collective agreement requires the union to identify specific circumstances where, in their opinion, adequate safety could not be maintained or an undue burden would be placed on members of a reduced crew. While the parties have not agreed on a Joint Statement of Issue in this case, the union has in fact referred to some ten situations, referred to in the Company's Statement of Issue, to support its objection to the reduction of the crews in question. It would plainly be improper, particularly in view of the clear language of the agreement, for the parties to refer to new matters at the hearing. One of the purposes of the procedure to which the parties have agreed is to permit each side to prepare its case, and this can only be done if it is known precisely what the issues are. It was not suggested that the specific circumstances set out in the Company's Statement of Issue were not in fact the circumstances with respect to which the union had taken timely objection. The decision to be made, then, is whether, on a consideration of these specific circumstances, the reduction in crew size suggested by the Company may be made with maintenance of adequate safety and without placing an undue burden on the members of the reduced crew. The parties were in agreement, however, that in considering these specific circumstances, regard might be had not only to the events recorded in the surveys which were conducted pursuant to Article 5(b)(3), but also to other events which might be relevant to a consideration of those circumstances.

In **Case No. 248** it was determined that, in the particular circumstances involved, the head-end trainman could be eliminated without affecting the maintenance of adequate safety and without placing an undue burden on the members of the reduced crew. There are a number of similarities between that case and this, since the trains involved are the same, although moving through different territory. Nevertheless, this case is to be decided on its own merits, having regard to the circumstances mentioned above. It should be stressed that the issues of "adequate safety" and "undue burden" are the only ones which the Arbitrator has jurisdiction; whether the proposed reduction in crew size is a wise or desirable step is a matter with which the Arbitrator may not properly be concerned. Under article 5(b) of the collective agreement the Arbitrator's task is to consider the particular circumstances referred to by the Union, and to determine with respect to each of them whether the reduction in crew size suggested by the Company may be made with maintenance of adequate safety and without placing an undue burden on the members of the reduced crew. These circumstances will now be considered in turn.

The first matter is the assistance of the train conductor in the entraining, detraining, seating and ticketing of passengers. This duty relates primarily to day coach passengers only; sleeping car passengers are attended to by the sleeping car porters. Even on the day coaches there are porters whose duties include rendering assistance to entraining and detraining passengers. While both the conductor and the front-end brakeman may well busy themselves with this duty, at least at terminals where there is a large number of passengers, it will be apparent that the removal of the front-end brakeman would not in fact mean that the conductor had to take over his work. The conductor cannot be in two places at once; he can render such assistance to passengers as he can, but beyond that the result of the removal of the front-end brakeman would simply be that the work which he had performed did not get done. In any event, as has been noted the duties in connection with entraining and detraining passengers may largely

be performed by the porters. It is necessary for a trainman to make a visual check to ensure that all passengers are aboard before giving the signal to proceed. This duty may be performed by the conductor in any event, and the removal of the front-end brakeman could not be said to impose any measurable burden on the conductor in this respect.

It is the duty of the conductor to collect the tickets of day coach passengers. Since June 1, 1965, it has not been necessary for the conductor to collect tickets from passengers holding sleeping or parlour car space. In addition, the procedures of ticket enveloping and the selling of coach tickets on a controlled basis have reduced to some extent the amount of time these duties require. The conductor has been assisted, as he has required it, by the lead-end brakeman in these duties. The removal of this assistance will therefore increase the burden upon the conductor. The survey data reveal that some 2.5 per cent of the head-end brakeman's total time on duty was devoted to assisting the conductor in the ticketing of passengers. Whether or not the removal of the head-end brakeman could be said to impose an "undue" burden on the conductor is a question to be determined not merely with respect to any particular duties, but on a consideration of the assignment as a whole. In respect of this aspect, however, it is my view that while the removal of the head-end brakeman would not affect the safety of the operation, it would increase somewhat the burden on the conductor.

The second matter raised by the union relates to the conduct of train patrols, running inspections of trains met and passed en route. In this respect what was said in **Case No. 248** is, in my view, of equal application here. There are a number of persons with some responsibility in this respect, and there is already considerable duplication of effort. Elimination of the front-end brakeman would not involve any significant increase in the duties of others, and it would not, in my view, affect the safe operation of the train.

The third matter relates to the conduct of the intermediate terminal air brake test. This too was dealt with in **Case No. 248**, and what was said there applies equally in the instant case. The giving of the signal to apply brakes may be given by any number of the crew (except the rear-end brakeman), and in particular by the baggageman, who is usually in the proper position to give it in any event. The additional burden on him would be negligible, and there would be no implication with respect to safety.

The fourth matter relates to the lining of siding switches at meeting points, and the carrying-out of inspections at such points. The territory involved is predominantly ABS territory, governed by an automatic block signal system, and high proportions of this is under centralized traffic control (CTC). The development and modernization of these track and signal structures have to a very large extent eliminated the need for hand switching on the territory covered by these assignments. There are, however, places where another train is met and the train must be placed on a siding, it being the responsibility of the head-end brakeman to line the switches. In winter, this may involve sweeping them free of snow or ice. The cleaning out of frozen switches may be necessary even in CTC territory, and in such cases there are procedures to be followed in connection with advising the dispatcher as to the switch condition and obtaining advice from him. In addition to lining switches, the head-end brakeman conducts a visual inspection of the passing train, as well as of his own train as it goes by. This is really an incidental duty, and is not onerous in itself. The substantial question is whether the addition of the duty of lining switches to the duties already performed by the conductor or another member of the crew would affect the safety of the operation or place an undue burden on the employee.

The extent to which it is necessary for the head-end brakeman to line switches varies both from day to day, and as between the several assignments on the territory in question. From the survey reports, it would seem that such switching might be called for once or twice on an assignment, although on some assignments it seems not to have been necessary at all. It would appear to take some ten or fifteen minutes of the trainman's time, although this figure could also be subject to variation. The duty is one which must be performed.

During the time which it takes, the train crew remaining on board would then consist of the baggageman and rear-end brakeman, apart from the engine crew and porters. This brief reduction of the crew actually on board the train would not, in my view, have any noticeable effect from the point of view of safety. It is, however, an additional burden on other crew members, in particular, it would seem, the conductor or the rear-end brakeman. Whether the result is an "undue" burden or not is the question to be decided.

The fifth matter relates to the delivery of register tickets to operators at register points. This was rarely necessary during the survey period, but in any event is a duty incumbent on the conductor, which may be delegated to one of

the trainmen. If this assistance were no longer available, it could still not be said that there was any appreciable additional burden on the conductor on this account.

The sixth matter relates to the handling of steam valves which have unexpectedly closed. There are no specific responsibilities allocated to the head-end brakeman with respect to such situations. He would normally assist other crew members, but it does not appear that any such procedures as may be required call for a specific crew complement. A number of incidents occurred during the survey period and at other times which called for the members of the crew to perform tasks going beyond their normal routine. Obviously, with a reduced crew, there would be fewer persons available to lend assistance on such occasions, and for this reason the burden on those remaining would be increased. But this particular "burden" is not at all well-defined, and it cannot be said that the absence of one individual, having no particular duties in such situations, and where no particular complement is required, would place an undue burden on others. It does not appear, in my view, to be a question of safety.

The seventh matter relates to the assistance given by the head-end trainman in cases of train accidents, hot boxes, setting off of passenger cars and transfer of passengers. Such matters might be thought to be relatively rare occurrences, but there are examples of such during the survey period. In such cases, as in those described in the preceding paragraph, it is the duty of all crew members to assist in whatever way possible under the direction of the conductor or some other person with authority. Reduction of crew size might be said in such cases to affect the efficiency of the crew's work, but it does not, any more than with respect to the sixth matter, have a material effect on safety or the work-load of others.

The eighth matter relates to the control of inebriated or otherwise impaired or unruly passengers. In this connection, while there were incidents of untoward passenger conduct detailed in the survey reports, none arose which, in my opinion, could not have been handled without difficulty by other crew members in the absence of the head-end brakeman. With a reduced crew, adequate safety could be maintained, and there would not be an undue burden on others in this respect.

The ninth and tenth matters relate to the performance of certain incidental functions and the observation of certain regulations. These matters are generally similar to those dealt with under the same headings in **Case No. 248**, and what was said there is generally applicable in this case. While there is a responsibility on the head-end trainman with respect to the observation of these rules and the carrying out of certain procedures, it is not necessary that they be carried out by the head-end trainman as such, and the prime responsibility is that of the conductor. Because the reduction of crew size would reduce his opportunity to delegate certain functions, it could be said that the job of the conductor would thereby be more onerous, as would the jobs of other crew members to whom some of those tasks might be delegated. The actual tasks involved, however, take up a very small portion of the crew's time.

From all of the material before me, it appears in this case, as in **Case No. 248**, that in the conditions under which these trains are now operated, and with the equipment and techniques used, the duties and responsibilities of the head-end trainman are very limited. The elimination of the position could be made, and adequate safety maintained. The reduction would, however, increase to some extent the burden placed on the members of the reduced crew. In particular this burden would be increased with respect to the duties of ticketing and assisting passengers, the carrying out of certain procedures required by operating rules and special instructions, and the lining of siding switches. The increased burden on the other members of the crew may be distributed between the conductor, the baggageman, and the rear-end brakeman, but would appear to fall primarily on the conductor. It may be remembered, however, that the day coach and sleeping car porters, and the sleeping car conductor, perform within the proper scope of their duties certain tasks which have in the past been performed by the conductor and trainmen. Whether or not the result is satisfactory from the point of view of customer service is not a matter for consideration here, important as it may be. The fact is that changes in staffing, as well as changes in trackage and in methods of operation have reduced the amount of time required to be devoted by the train crew to the active performance of its tasks. While in some respects these duties have increased (for example, in that the conductor must now handle credit-card sales), the actual time this accounts for is slight, and there appears to have been a net decrease in the time requirement of his tasks. In any event, the material reveals substantial periods of time available to members of the train crew for performance of their tasks. The actual increase in the burden of work falling on the conductor as a result of the reduction of the crew size is not precisely measurable. That there would be more work for him is clear, but it is not clear from the material before me that he, or any other member of the crew, would be overworked, that is, that the increased burden would be "undue". Even if the crew were to remain at its present strength it is conceivable, of course, that circumstances could arise in which the conductor would be overworked. In the event of crew reduction,

those circumstances could arise more easily, and there could more likely be situations where the company would find it necessary to increase the crew in order properly to handle the work available. The decision in this case must be made on the basis of the material before me, which does not establish that it would be impossible for a reduced crew to handle these assignments, as they are revealed in the survey reports and other materials before me, without being overworked. Because of existing duplication of effort, and the limited nature of the work now performed by the head-end brakeman, the net increase in work load of the other crew members would be relatively slight. It would not constitute an "undue" burden on them, in my opinion.

Accordingly, it must be my conclusion in this case that the head-end trainman could be eliminated on the assignments in question without affecting the maintenance of adequate safety and without placing an undue burden on the members of the reduced crew. I find it necessary to repeat that whether the possible crew reduction is desirable from the point of view of efficiency or of service to the public are not matters which may properly be considered in these proceedings. The decision is restricted to the issue raised in the collective agreement made by the parties themselves.

(signed) J. F. W. WEATHERILL
ARBITRATOR