

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 335

Heard at Montreal, Tuesday, January 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Consist of Yard Crews at Prince Albert, Saskatchewan.

COMPANY'S STATEMENT OF ISSUE:

Inability of the United Transportation Union to agree with the Company that adequate safety can be maintained with a reduced consist of one Yard Foreman and one Yard Helper for crews working at Prince Albert, Saskatchewan.

FOR THE COMPANY:

(SGD.) K. L. CRUMP

ASSISTANT VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company.

A. J. DelTorto	– System Labour Relations Officer, Montreal
M. A. Matheson	– Labour Relations Assistant, Montreal
N. R. Smith	– Service Design Officer, Montreal
D. E. Christensen	– System Transportation Officer, Montreal
J. B. Pool	– General Yard Master, PrinceAlbert

And on behalf of the Union:

H. R. Burnett	– General Chairman, Winnipeg
R. Murdoch	– Secretary, General Committee, Winnipeg

AWARD OF THE ARBITRATOR

The Company seeks to reduce the size of yard crews working at Prince Albert from a crew of one Yard Foreman and two Yard Helpers to a crew of one Yard Foreman and one Yard Helper. The collective agreement provides for the Company to give notice to the Union of its request for such a reduction, and, where the parties cannot agree, for arbitration by the Canadian Railway Office of Arbitration, the issue being limited to whether or not adequate safety can be maintained with the proposed crew consist reduction.

The agreement requires that, after the completion of a survey, if the parties do not agree that adequate safety can be maintained with the proposed crew consist reduction, the Union is to give specific reasons in writing why, in their opinion, adequate safety cannot be maintained. The matter is then to be determined having regard to these specific moves as well as certain general considerations which may affect the matter. In the instant case the Union relies on the following reasons why, in its opinion, adequate safety could not be maintained:

1. Owing to curvature of track, combined in some cases with obstructed view, sight lines could not be maintained with a reduced crew.
2. There are many road crossings within Prince Albert switching limits requiring protection in accordance with Rule 103, Uniform Code of Operating Rules. Switching over these crossings could not be performed safely with a reduced crew.
3. At certain locations where switching is performed steps must be taken to protect workmen and vehicle movement.
4. There are a number of industries which must be spotted by a man on the side opposite to the engineman and sight lines could not be maintained with a reduced crew.
5. Close clearance at various locations obscure sight lines thus making a full crew mandatory.
6. Highly dangerous chemicals are used at the Pulp Mill. Safe handling of such commodities requires close contact between crew members. This close contact could not be maintained with a reduced crew.
7. Reduced crews would find it impossible to comply with all of the rules in the Uniform Code of Operating Rules, Safety Rules and General Instructions.

Of these, only the sixth is, in my view, a specific reason of the sort required by the collective agreement. The collective agreement calls for a survey of the area and work, and for the identification of particular situations to which the parties and the arbitrator may address themselves. With the exception noted, the Company was thus unable to deal with specific situations as to which the parties differed. It did, however, describe certain situations where, in its opinion, operations could be carried out with adequate safety provided certain changes in switching methods were introduced, or limitations imposed on the number of cars handled. I am satisfied on the material before me that in these situations the work can be carried out with maintenance of adequate safety by a two-man crew.

The Company also addressed itself to the issues raised by the Union although these were, with the exception noted, of a general nature. They were correspondingly dealt with in a general way, although particular examples were referred to in some instances. The first ground of objection clearly calls for identification of specific locations. Although, in its presentation the Union referred to "extreme curvatures" of track to be found in many areas of the yard, there was no analysis of specific situations, and no answer to the changes in switching methods proposed. As to the second ground, protection of road crossings is required in some cases, but such protection itself does not require a three-man crew. The Union did not refer to situations where, arguably, the crew would be involved with certain switching which required the adoption of positions which would not permit crossing protection. As to the third ground, while there may be locations where steps must be taken to protect workmen and vehicle movement, it is incumbent on the Union to show why, in any such location, three men rather than two are required to take these steps. This simply was not done. By contrast, reference may be made to **Case No. 314**, where this consideration was given effect in the particular circumstances there described. As to the fourth ground, this again obviously requires specification of instances. Whether or not, if it is necessary for a crew member to be stationed on the side opposite the engineman, two other persons are necessary to pass signals to the engineman is a question which can only be decided on the facts of the particular case. It is obviously quite possible that in many cases one person would be sufficient to relay signals. The fifth ground must be answered in the same way. Close clearances do cause difficulties, but whether they are insurmountable or not by a two-man crew depends on the circumstances. As to the sixth ground, it is no doubt the case that special precautions must be taken in handling cars of chemicals. Inspection of such cars should perhaps be carried out only while another crew member is nearby. However this may be, this does not affect the movement of the car or the maintenance of sight lines.

The last ground of objection was relied on particularly by the Union. The matter has been referred to in a number of awards, and raises the question of the effect which the proposed reduction in crew size might have on productivity. It may be that in many cases, productivity would be somewhat reduced, although it was stated by the Company that in its experience, such reduction was slight. Both parties referred to certain remarks made in the Symington Yard case, an earlier award between the same parties. There the following was said:

The Union relied heavily on these rules, arguing that they could not be complied with by reduced crews performing the work in question. The answer to this can only be that the rules must be

complied with, if in fact the work cannot be performed in a manner which complies with the rules, then it cannot be performed. The employees would not be to blame for this. The responsibility for such a situation would clearly be that of the employer.

In the instant case, it was alleged by the Union that Company officials were in some cases harassing the members of reduced crews, and requiring them to perform as much work as had been done prior to reduction in crew size. In particular, it was said, employees are improperly required to carry out moves in an unsafe way, and disciplined for failure to do so.

These are serious allegations, and could well relate to issues which might come, in a proper case, before the Office of Arbitration. They do not, however, affect the question which is before me, namely, whether certain moves can be carried out by a two-man crew with maintenance of adequate safety. If the Company subsequently requires a two-man crew to carry out unsafe moves, that is obviously a different matter. Reference was made to the case of one employee who, it was said, was disciplined for failure to carry out an unsafe procedure. It is possible that the employee was improperly disciplined; whether that is so or not is a separate matter, and is of course not before me now.

Reference may also be made to remarks made in **Case No. 266**, as follows:

It would appear from the position set out by the union in its correspondence with the company on this matter, and from the representations made at the hearing, that one of its major concerns is the establishment in this case, as in the case of Job 1L8, of "guidelines" governing the reduction of crew size. In that case, it was said of the several specific instances dealt with that the work could be performed safely by a reduced crew provided certain things were done, for example that no more than a certain number of cars were handled at one time at a particular location; that adjoining trackage be cleared to maintain sight lines; that the engine face a particular direction; and the like. These provisos or guidelines were relied on as establishing that it was indeed possible for the work to be performed safely by a reduced crew. They do not, however, constitute absolute requirements which the company is obliged to meet: the arbitrator has no jurisdiction to impose such requirements. The question before the arbitrator is whether it is possible for a reduced crew to do the work. I have indicated in a general way in other awards that the question, is, in effect, whether it is a reasonably practical matter for a two-man crew to perform the assignment. If, by making the sorts of changes, or following the sorts of "guidelines" that have been referred to, it appears that the work can be done by a two-man crew, then it must be concluded that the crew is reducible. But the actual performance of any particular operation is the Job of the crew itself, under the direction of its foreman, subject to the overriding directions of management. Thus, there are some operations on the assignment in question that could not be carried out in some situations even by a three-man crew: in a dense fog, for example. The only absolute requirements are those of the general operating rules, and these must be observed at all times, regardless of crew size, and regardless of their impact on productivity.

Subject to the foregoing, it may be said that the "guidelines" referred to in **Case No. 223** would apply generally in this case: in a number of specific instances the company has indicated that changes in switching methods, limitations on numbers of cars handled or the like would make it possible for the work to be performed by a reduced crew. These "guidelines" are not directives, but are really recitals of the considerations on which the issues have been determined. They are not immutable, but would of course give way to better methods of switching, or different limitations on the number of cars handled, reflecting a better analysis of the situation, or changes in equipment.

For all of the foregoing reasons, it is my view that crews working at Prince Albert may be reduced to a consist of one Yard Foreman and one Yard Helper with maintenance of adequate safety. It is accordingly my award that the request of the Company be granted.

(signed) J. F. W. WEATHERILL
ARBITRATOR