CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 396

Heard at Montreal, Tuesday, February 13th, 1973

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of passenger Brakeman J. Kufflick, Moose Jaw, for payment of 8,586 miles lost when reduced from head-end brakeman's position on "The Canadian" (Trains No. 1 and No. 2) following implementation of the decision of the Canadian Railway Office of Arbitration in CROA Case No. 248.

JOINT STATEMENT OF ISSUE:

Following the decision of the Arbitrator in CROA Case No. 248 the Company posted notices in accordance with Article 5, Clause (b), Sub-section (7), advising that passenger train crews operating on "The Canadian" on the run between Moose Jaw and Brandon and between Medicine Hat and Moose Jaw were listed as "reducible crews" and would so operate out of the respective home terminals Moose Jaw and Medicine Hat, effective November 30th, 1970.

Due to the physical disability of Brakeman J. Kufflick, a "protected" trainman with preferred rights in passenger service, which preclude his employment in any alternate road service capacity, the Company granted deferment of the implementation of reduced passenger crew consists on the run between Moose Jaw and Brandon on which Brakeman Kufflick was employed until January 3rd 1971, in order to permit the Union to consider and agree upon some suitable arrangement on Brakeman Kufflick's behalf, but without success. Reduced passenger crew consists were implemented on the run between Medicine Hat and Moose Jaw on November 30th, 1970, and on the run between Moose Jaw and Brandon on January 4th, 1971.

Brakeman Kufflick was displaced from his regular position as Head-end Brakeman on the Moose Jaw – Brandon run on December 8th, 1970, by the return to service of a more senior passenger Brakeman who had been off account sickness for several months. Thereafter, Brakeman Kufflick had insufficient seniority to hold any regular position in passenger service out of Moose Jaw an he worked only intermittently, as rear-end Brakeman on "The Canadian" until retiring on pension effective July 1st, 1971.

Between December 11th, 1970, and February 14th, 1971, Brakeman Kufflick submitted tickets for individual trips he would have worked but for the passenger crew reductions that were made, which aggregate the 8,586 miles constituting the claim in this dispute. The Company declined this claim, contending that Brakeman Kufflick was not placed on laid-off status as a result of the discontinuance of a brakeman's position in a reducible passenger train crew consist and that his limited employment in passenger service subsequent to December 8th, 1970, was the result of his physical inability to work as a trainman in any alternate road service capacity.

In support of its request for payment of the claim involved, the Union contend that the Company violated the provisions of Article 5, Clause (b) Sub-section 6 (b), of the Collective Agreement, inasmuch as the removal of Brakeman Kufflick from a brakeman's position on a "reducible crew" in passenger service placed him on laid-off status. Article 5, Clause (b), Sub-section 6, states:

6. Where it has been determined by agreement or Arbitration that a crew consist can be reduced such crew shall thereafter be a "reducible crew" and a brakeman's position on such reducible crew may be discontinued at any time thereafter provided that:

(a) no "protected" trainman is on laid-off status, or

(b) a "protected" trainman will not be on laid-off status as a result thereof.

FOR THE EMPLOYEES:	**FOR THE COMPANY:**
(SGD.) R. T. O'BRIEN	**(SGD.) W. J. PRESLEY**
GENERAL CHAIRMAN	**GENERAL MANAGER**

There appeared on behalf of the Company.

P. A. Maltby	– Supervisor Labour Relations, Winnipeg
J. Ramage	– Special Representative, Montreal
B. E. Scott	– Assistant Supervisor Labour Relations, Toronto

And on behalf of the Union:

R. T. O'Brien	– General Chairman, Calgary
J. H. McLeod	– Vice-Chairman, Medicine Hat
P. P. Burke	– Vice-Chairman, Calgary
A. R. McAskill	– General Secretary, Committee, Revelstoke

AWARD OF THE ARBITRATOR

The facts and the issue in this case are succinctly set out in the joint statement of issue. The grievor is a "protected" trainman. Because of a reduction in size of his crew, determined following the award in **Case No. 248**, he was, having regard to his seniority, subject to transfer to other work. Because of his physical disability, however, there was no other work available to him to which he could properly claim entitlement. Had it not been for such disability, there was work to which he would have been entitled to be assigned.

It would appear that it was open to the parties to agree that the grievor might be assigned as a baggageman pursuant to Article 36(b) or to a spare board pursuant to Article 5(b)(8),or even that he be retained as a trainman, a senior employee being displaced in his stead. Any such arrangement would require the agreement of the parties and would, of course, affect other employees to some degree. In fact, however, no such arrangement was made between the parties. It is not necessary that any comment be made with respect to this, there is no question of any violation of the collective agreement, it is simply that a course which would appear to have been open to the parties, acting by agreement, was not taken.

The grievor was entitled, by reason of his seniority, to other employment with the Company. Thus, the mere fact that he was displaced from his former crew by reason of a reduction in crew consist does not account for his being placed on laid off status. The reduction in crew size made necessary a search for another assignment; there was another to which he was entitled. He was unable, however, to take up any such job, because of his physical incapacity.

In the circumstances, it is clear that it was the grievor's physical incapacity to perform other work to which he was entitled, and not the mere fact of the reduction in crew size, which resulted in his lay-off. The conclusion would be even more clear if the grievor had first been transferred the work to which, by reason of seniority, he was entitled, and then laid off because of his incapacity to perform it. The result is the same.

For the foregoing reasons, it must be concluded that there has been no violation of the collective agreement. The grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR