CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 531

Heard at Montreal, Tuesday, January 13th, 1976

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Conductor J. M. McKenzie and crew, Revelstoke, for five miles account switching at Rogers on November 12th, 1974.

JOINT STATEMENT OF ISSUE:

Beavermouth, Mile 63.0, Mountain Subdivision, was established a Designated Turnaround Point prior to the diversion of trackage between Mileage 57.7 and 66.0. The Union was advised of this diversion of trackage by Train Order Bulletin 587, issued by Superintendent A. D. Watson on August 12th, 1974, advising that effective 11:59, August 26th, 1974, the main track between mileage 57.7 and 66.0 Mountain Subdivision, was to be abandoned and replaced with new track of equivalent length. All claims for time at Rogers were paid from August 27th until November 12th, 1974. After that date such payments were discontinued by the issuance of Bulletin No. 663 on November 6th, 1974.

The Union alleges that the Company, in declining the claim of Conductor J. M. McKenzie and crew violated Article 47, Clauses 1(a) and (b) and Article 11, Clause (f)(2) of the Collective Agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. P. BURKE	**(SGD.) J. D. BROMLEY**
GENERAL CHAIRMAN	**GENERAL MANAGER**

There appeared on behalf of the Company:

L. J. Masur	– Supervisor Labour Relations, Vancouver
J. Ramage	– Special Representative, Montreal
J. T. Sparrow	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. P. Burke	– General Chairman, Calgary

AWARD OF THE ARBITRATOR

Article 47 (1) (a) and (b) is as follows:

> Material Change in Working Conditions
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> **1. (a)** The Company will not initiate any material change in working conditions which will have materially adverse effects on employees without giving as much advance notice as possible to the General Chairman concerned, along with a full description thereof and with appropriate details as to the contemplated effects upon employees concerned. No material change will be made until agreement is reached or a decision has been rendered in accordance with the provisions of Section 1 of this Article.
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> **(b)** The Company will negotiate with the Union measures other than the benefits covered by Sections 2 and 3 of this Article to minimize such adverse effects of the material change on employees who are affected thereby. Such measures shall not include changes in rates of pay. Relaxation in schedule rules considered necessary for the implementation of a material change is also subject to negotiation.

The abandonment of track between Mileage 57.7 and 66.0 on the Mountain Subdivision, its replacement by new track of equivalent length at a higher level, and the consequent disappearance of Beavermouth, a Designated Turnaround Point, constituted, in my view, a material change in working conditions. The Company's position is that it did not "initiate" this change, because the relocation of the track was made necessary by alterations in the level of the Columbia River, and the construction of the Mica Creek Dam, pursuant to the Columbia River Treaty.

The fact is, however, that the Company did, out of necessity or otherwise, effect a material change in working conditions. The collective agreement does not, in my view, use the word "initiate" to describe some sort of primal cause of the action. It would be, one supposes, a rare case in which the Company makes a spontaneous determination to change working conditions, and thus "initiates" them in this limited sense. More often, one supposes, there are business reasons for changes, but they may also be motivated by other considerations such as, notably, legislative requirements. What the collective agreement is concerned with is the relationship between the Company, the Trade Union and the employees. Whatever the motive for the change may have been, and whether or not it may be said to have been forced on the Company by extraneous events, the fact is that as between the parties before me the Company must be said to have initiated the change. The Company did, voluntarily or otherwise, take steps with respect to its trackage which would affect employees in the manner referred to in Article 47. The article calls for the giving of notice and no such notice was given. I find, accordingly that the Company was in violation of Article 47.

Article 11(f)(2) is as follows:

> **11 (f) (2)** When switching is performed at designated turn-around points, the provisions of Subsection (1) of this clause will apply. Ruby Creek, Tadanac, Roseberry, Beavermouth, Merritt, Chase, Keith and McLean and such other points as may be established hereafter will be recognized as designated turn-around points. The discontinuance of any designated turn-around point or recognition of an additional designated turn-around point, based on the amount of turn-around service and switching resulting therefrom by through freight trains at such points, will be subject to negotiations between the Regional Manager and the General Chairman. In the event that agreement cannot be reached on the discontinuance or establishment of a designated turn-around point, either party may, by so advising the other in writing, refer the dispute to the Canadian Railway Office of Arbitration for determination.
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> **NOTE:** If picking up or setting out a diesel unit or units is the only service performed, this will not be regarded as switching. The term unit or units means a unit or units that were operated or are to be operated by the engineer on the run on which this service is performed.

At the time of the grievance, Beavermouth had disappeared. A siding located at Mile 61.9 on the new track, also named Beavermouth, still exists, and is sometimes referred to as "New Beavermouth". It, however, is not a designated turn-around point, and it is not suggested that it should be. Certain movements which were carried on at "old Beavermouth", however, are now carried on at Rogers, which is at Mile 67.8. The claims in issue in this case are claims for time at Rogers, and they have been submitted on the same basis as certain claims for time at

Beavermouth were formerly submitted. It is as though “Rogers” should be substituted for “Beavermouth” in Article 11(f)(2), or, to put the claim in another way, it is that Rogers should be recognized as a designated turn-around point.

On this aspect of the case, the Company’s defence is that the movements in respect of which these claims are made did not constitute “switching” and that the claims must fail in any event, whether Rogers be considered a designated turn-around point or not. If similar claims for such work done at Beavermouth had been paid, they were paid in error, and the Company is not bound to continue the error: see **CROA Case No. 11**. The movement in question was the addition of a helper engine. The picking up of a diesel unit of this sort would not constitute switching within the meaning of the note to Article 11(f)(2), and I think such units, forming part of the overall power of the train, must be considered as operated by the engineer on the run, even though such units are manned by their own engineer acting under the train engineer’s direction. The whole train is of course under the one engineer’s control.

Accordingly, having regard to the particular claims made, I conclude that they do not come within the scope of Article 11(f)(2). On the more general question, it would seem that while the movements now perform at Rogers are generally like those previously carried out at Beavermouth, it does not follow that Rogers must necessarily be regarded as the successor to Beavermouth as a designated turn-around point. It may be that it is, and may be determined to be so in the proper manner, but in the instant case there is no evidence relating to the criteria set out in Article 11(f)(2) which would justify any conclusion on the point. At the present time, then, it cannot be said that Rogers is a designated turn-around point, so that even if the movements on which the claims are based should be characterized as “switching”, the claims would not come within Article 11(f)(2).

In the result, therefore, success in this grievance is divided. It is declared that the Company was in violation of Article 47, although there is no basis for making any award of specific relief at this time. The particular claims for switching at Rogers must be dismissed.

(Sgd.) J. F. W. WEATHERILL
ARBITRATOR