

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 539

Heard at Montreal, Tuesday, March 9, 1976

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Rate of pay applicable to the Operator, Hantsport, N.S.

JOINT STATEMENT OF ISSUE:

Effective July 26, 1974 the Company reclassified the Operator's position at Hantsport, N.S. from Level E-2 to Level F-1 on the basis that the position did not require more than four hours work in respect of train operations. The Union protested and a joint on-the-job survey was conducted which indicated a total work load of 4 hrs. 34 mins. per day, including 55 mins. per day to perform a yard check.

The Company maintains that yard checking is not work in respect of train operations and, therefore, the rate applicable in accordance with Appendix 'B' to the Collective Agreement is properly F-1 "where the workload in respect of train operations requires 2 to 4 hours work per day".

The Union claims that yard checking is work in respect of train operations and, therefore, the rate should be E-2 "where the workload in respect of train operations requires more than 4 hours work per day".

FOR THE EMPLOYEE:

(Sgd.) R. J. CRANCH
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) R. A. SWANSON
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company.

M. Yorston	– Supervisor Labour Relations, Montreal
J. A. McGuire	– Manager, Labour Relations, Montreal
J. E. Palfenier	– Labour Relations Officer, Montreal
R. C. Donovan	– Assistant Supervisor, Labour Relations, Montreal
E. S. Cavanaugh	– Supervisor, Labour Relations, CP Rail, Toronto

And on behalf of the Brotherhood:

R. J. Cranch	– General Chairman, Montreal
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AWARD OF THE ARBITRATOR

Certain job evaluation criteria are set out in Appendix 'B' to the collective agreement. Article B.04 provides as follows:

B.04 Operators: Terminals Other Than Main Line

Level Criteria

- E (2) Where the work load in respect of train operations requires more than 4 hours' work per day.
- F (1) Where the work load in respect of train operations requires 2 to 4 hours' work per day.
- G (1) Where the work load in respect of train operations requires less than 2 hours' work per day.

By article 3.06.02, rates of pay are to be fixed in accordance with the criteria set out in Appendix 'B'. Where work load changes so as to warrant a different level as determined by the criteria, then the rate is to be adjusted accordingly. In the instant case, the work load of the position in question consists either of more than four hours' work per day "in respect of train operation", or of two to four hours' work per day, "in respect of train operations", depending on the effect to be given to the 55 minutes per day involved in performing a yard check. The issue then is: is yard checking work "in respect of train operations" within the meaning of Appendix 'B' to the collective agreement?

Under this collective agreement, work "in respect of train operations" is to be distinguished from "station work" and perhaps from other sorts of work as well. "Train operations" does not, in this context mean the actual operation of trains by enginemen or train crews, since this is a bargaining unit of dispatchers, agents and other related classifications. It does, however, connote some closer relationship to the actual running of trains than certain other work of a more administrative nature.

In article B.02.03 it is recognized that "Operators' positions are established primarily for the purpose of train operations", but it is noted that "in some cases Operators perform station work as well". It is, within the framework of article B.04, the level of work in respect of train operations that determines an Operator's remuneration. I was not referred to any agreed definition of "station work", but this would appear to include preparation of certain reports, and might include (this appears to be a matter not yet determined) work relating to waybills and bills of lading. In the Company's view (as appears from a document setting out certain "guidelines" in this respect for use in another matter), work in respect of train operations includes copying train lineups, reporting trains by to dispatcher, copying train orders, preparing switch lists or instructions, preparing journals and compiling train tonnages, contacting shippers or consignees with respect to car placement or removal, and contacting other roads to arrange interchange of cars. Certainly it would be my view that these tasks were "in respect of train operations" as far as this collective agreement is concerned. Each of those tasks relates directly to cars on tracks; their movement and their desired movement. Some of them would appear to be quite simple, others to call for some degree of skill and experience. Each, however, involves an immediate reporting of, or direction respecting the movement of rolling stock. Those tasks which the Company has considered to be "station work" do not share this characteristic, with one exception, that of yard checking.

While there appears to be no definition of "station work" in the collective agreement, there is a definition of "train operations" in article B.06, as follows:

- B.06** In addition to the handling of train orders, the term "train operations" includes work associated with the ordering of trains, compiling tonnage, I.D.P. machines or procedures and other related work.

This definition is, I think, consistent with what I have suggested above, although the reference to "compiling tonnage" may be thought to extend it slightly. It is, in any event, a broad definition, and, given that the Company itself quite properly considers the preparation of switch lists and the arrangement of car placement and removal as work in respect of train operations, it is my view that yard checking, the verification of what cars are located where,

should be considered as included in the “other related work” to which Article B.06 refers, and should be contrasted with “station work” or other work which an Operator may perform.

The Company argued that yard checking is not specifically Operator’s work, and that, in itself, yard checking is work performed by lower rated classifications, so that it would be anomalous to retain an Operator at a higher level of wages simply because of the presence, among his job functions, of this lower-rated work. While there is an obvious force to that argument, it does not really go to the question before me, which is whether yard checking is work “in respect of train operations” within the meaning of this collective agreement. That work may include tasks that are essentially those of lower-rated classifications, but if it is in respect of rail operations then that is all that is to be considered for the purpose of determining this issue. The question is not whether the work itself is simple or complex, but merely whether it is “in respect of rail operations”.

The Company also argued that the criteria set out in article B.04 could properly be paraphrased by substituting for the phrase “in respect of train operations”, the expression “the duties peculiar to an Operator”. In my view, such a paraphrase is not justifiable, having regard to the language of the collective agreement. By “the duties peculiar to an Operator” are meant those particular duties which tend to justify a higher rate for his job, the phrase seeks to distinguish those tasks which an Operator might properly be called on to perform, but which also come within some lower-rated job. The criteria set out in the agreement, however, do not measure the content of an Operator’s job in this way. Rather, they focus on the nature of his work as “in respect of train operations” or otherwise. Further, it is quite conceivable that some of the “station” or other work which an Operator might perform may be of a higher-rated sort. In this case, the paraphrase suggested by the Company would be plainly contradictory of the agreement. Reference should also be made to the suggestion in the Company’s brief that the issue is whether yard checking is “required to make trains operational”. That is, with respect, not the question, and it does not properly state the criterion set forth in article B.04, that the work load be of a certain number of hours of work “in respect of train operations”. That means, as I have indicated, that the work must be directly related to the actual movement, or instructions relating to movements of cars on tracks. The work of car checking, being the recording of cars, by number, in a yard check book, comes within the broad definition set out in article B.06, as work “relating to train operations”, in my view.

For the foregoing reasons, the grievance is allowed.

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