

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 589

Heard at Montreal, Tuesday, January 11, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Concerning the number of freight handlers to be included in the establishment of a core group of CN and CP freight handlers at Montreal Wharf and of CP freight handlers at West Saint John Wharf pursuant to Item 1 of the February 27, 1976 letter of understanding, copy attached.

JOINT STATEMENT OF ISSUE:

The parties have been unable to agree on the number of employees who will constitute the core for CN and CP at Montreal Wharf and for CP at West Saint John Wharf. All other matters referred to in the letter of February 27, 1976 have been resolved.

FOR THE EMPLOYEES:

(Sgd.) W. T. SWAIN
GENERAL CHAIRMAN

FOR CANADIAN NATIONAL RAILWAYS:

(Sgd.) G. J. MILLEY
MANAGER, LABOUR RELATIONS

FOR CP RAIL:

(Sgd.) R. COLOSIMO
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Companies.

R. Colosimo	– Manager, Labour Relations, CP Rail, Montreal
G. J. Milley	– Manager, Labour Relations, CNR, Montreal
A. D. Andrew	– System Labour Relations Officer, CNR, Montreal
K. A. Pride	– Employee Relations Officer, CNR, Montreal
D. Cardi	– Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
W. C. Y. McGregor	– National President, Montreal
D. Herbatuk	– Vice General Chairman, Montreal
R. C. Smith	– National Vice President, Montreal
J. Scott	– Vice General Chairman, Montreal
D. Bellemare	– Consultant, Montreal

AWARD OF THE ARBITRATOR

This matter arises for determination pursuant to the final paragraph of an agreement between the parties dated December 3, 1976. That paragraph is as follows:

The foregoing represents the resolution of all issues, except one, pursuant to the February 27, 1976 letter of understanding. The one unresolved issue concerns the determination of the number of employees which is to constitute the core group for each of the three operations. That issue will be jointly submitted to the Canadian Railway Office of Arbitration for final and binding settlement. The Arbitrator's decision, together with the foregoing resolved issues, will constitute full settlement of all matters outstanding from the February 27, 1976 letter of understanding. Such full settlement will be made effective at the beginning of the second calendar week after the rendering of the Arbitrator's decision, at which time the level and method of calculating weekly layoff benefits provided by the Job Security Agreement effective March 1, 1976, and as provided herein, will begin to apply.

That agreement gave effect to an understanding previously reached in negotiations relating to job security and embodied in a letter dated February 27, 1976. That understanding was that Canadian National freight handlers at Montreal Wharf and CP Rail freight handlers at Montreal Wharf and West Saint John Wharf would be divided into three groups, for the purposes of the job security agreement. There would be a "core group", composed of persons considered to be employed on a year round basis (and no longer in seasonal employment), a "seasonal group" being those not in the core group but who have worked at least 65 days in the previous calendar year, and a "casual group" being all other employees. The core group would receive full job security benefits, the seasonal group would receive restricted benefits and the casual group would not be entitled to benefits.

By the definition set out in the letter of understanding and embodied in the agreement of December 3, 1967, the parties are able to identify those persons who may be members of the seasonal and casual groups from time to time. The core group, however, is not defined, except in a general way, and the parties have agreed that it should consist of a fixed number of employees. Further, the number is to be the same for each of the two groups at Montreal Wharf. The Arbitrator's task, pursuant to the agreement, is to determine the number of persons to come within these core groups.

If the determination of this number is to have some rational justification (although it should be remembered that barring amendment by the parties, the number will remain constant in the future regardless of actual work experience), then criteria should be considered which would have some value as indicators of "year round employment". Because of the nature of the work, establishment of a number of working days per year-analogous to, but higher than the number of days used to determine the seasonal group – would not, as the parties appear to agree, produce an acceptable result. The parties also agree that consideration should be given to employment over a period of years, because of cyclical fluctuations. In this respect, the Union would refer to a somewhat longer period than the Company, so as to go back to a period of "expansion" which preceded the recent years in which the work force has declined.

In its submission, the Companies suggest that the size of the core group can be determined by considering the number of persons who are employed in the off season. This is based on the assumption that those who work then, when there is generally less work available, would also stand for work during the season, and that their number would thus be representative of a group which could be considered as working the year round. Applying this to the period from 1973 to 1976, the Companies calculated that the average working force per day consisted of 32 persons in each of the Montreal operations and 87 persons at West Saint John.

The Union urges that the size of the core group should be determined by finding the number of persons who have worked more than 73 days per year over an averaging period. This figure is arrived at by prorating the figure used for the determination of the seasonal group, having regard to the extent of the benefits available to that group. Applying this figure to the years 1971 to 1975 inclusive, the Union concluded that the core groups at Montreal Wharf should each be of 64 persons, and that at West Saint John of 107 persons.

The parties' own expectations in the matter may be considered, and in this respect it may be noted that in negotiations the Union, after having requested substantially larger figures, indicated it would accept core groups of

50 and 110 persons at the respective locations. I would not suggest however, that the Union had in any way bound itself by these figures.

There is a rational justification for each of the criteria advanced. One is based on identification of a true core group of employees, the other on the extension of an operational definition of another group of employees. There may be other sorts of criteria that might be considered, such as length of service, but there is no single criterion which can be relied on to resolve what is essentially a matter for negotiation. The most that can be hoped for is a degree of rational support for the conclusion reached.

The Company's test, as I have indicated, seems a good indicator of the true core group. The assumption that those who work in the off season will work throughout the year is obviously subject to question, and might not be valid in all cases. It appears generally, however, to be based on common sense. The work force at any time, as the Union points out, should be considered as somewhat greater than the actual number of persons working, since it will also include persons who are absent for one reason or another. Further, there may be unusual requirements for work on "peak days", which may or may not be frequent during the off season. The "work force" should be considered as the groups large enough to meet such requirements. Even accepting the Companies' general reasoning, then, some qualification must be applied. The Union's figures, on the other hand, have been arrived at on a consideration of the employment of those who have remained employees, and must thus be considered to have been conservatively estimated.

Although the Arbitrator is asked not to mediate but to decide, his decision is to be as to the number of persons coming within the permanently – established group which, as time goes by, may or may not have any real resemblance to a true core group of year round employees. Such a decision is not of the same order as a decision in a grievance arbitration, but may accommodate the results of the application of diverse criteria including, as I have indicated, some consideration of the parties' expectations.

As noted above, the Companies' calculation based on an attempt to identify a true core group, would need to be revised upward. The Union's calculation appears conservative, although it is based on what might be thought to be too long a period of time. If a simple prorating of an existing criterion is to be used, the results of that should be considered, and in this case the result would be, at the locations in question, to sweep many or even all of the seasonal group into the core group (although that might not be the effect in other years). This is, I think, a consideration which militates against the simple prorating of the existing criterion.

Neither of the schemes advanced being fully satisfactory, it is my view that a proper number is to be found somewhere in between those advanced, having regard to the qualifications mentioned above. The figure is arbitrary in some respects, in any event. Having considered all of the parties' representations, it is my conclusion that the core groups at Montreal Wharf should each be of 50 persons, and that the core group at West Saint John Wharf should consist of 100 persons, and I so award.

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