

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 671

Heard at Montreal, Tuesday, September 12, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that certain members of the Alberta Tie Gang No. 1, although not classified as sectionmen, should in fact be paid the difference between what they were paid at the extra gang labourer's rate and the sectionman's rate sixty (60) days retroactive from June 28, 1977, until the conclusion of the assignment, November 10, 1977.

JOINT STATEMENT OF ISSUE:

The grievors were assigned to Alberta Tie Gang No. 1. They were performing work in connection with the renewal projects and were compensated therefore at the extra gang labourer's rate.

The Union contends that the grievors were entitled to compensation at the higher sectionman's rate for performing such work under the provisions of Section 16.1 of Wage Agreement No. 17.

The Company contends it properly pays the sectionman rate of pay to regular sectionmen working on Tie Gangs per Section 16 of Wage Agreement No. 17, but the employees in question were hired as labourers, performed labourers work and were properly paid the extra gang labourer's rate of pay.

FOR THE EMPLOYEES:

(SGD.) A. PASSARETTI
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. M. PATTERSON
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

P. E. Timpson – Assistant Supervisor, Labour Relations, Vancouver
J. A. McGuire – Manager, Labour Relations, Montreal
I. J. Waddell – Labour Relations Officer, Montreal
J. D. Jardine – Engineer of Track, Montreal

And on behalf of the Brotherhood:

A. Passaretti – System Federation General Chairman, Ottawa
G. D. Robertson – Vice-President, Ottawa
T. V. Greig – Vice President, Winnipeg
R. Lunn – General Chairman, Vancouver
H. J. Thiesson – Federation General Chairman, Calgary

AWARD OF THE ARBITRATOR

Section 16 of Wage Agreement No. 17 is as follows:

Section 16 – Special Maintenance and Extra Gangs

16.1 Trackman A/track maintainers and trackmen B employed in temporary extra gangs to be known as special maintenance gangs, doing section maintenance work, shall be paid the applicable trackman or track maintainer rate.

16.2 Section rates of pay shall not apply on large temporary extra gangs employed in ballasting and lifting track where new material has been distributed continuously along the line, relaying rail out of face, lining and other work incidental to such ballasting and relaying rail, or in other work too heavy for regular section gangs to perform.

16.3 Extra gangs shall not be used to take the place of regular section gangs.

The employees covered by this grievance do not work (or at least did not work at the material times) as members of regular section crews. There are a great many such crews established, and their members are engaged in a variety of tasks relating to track maintenance. Some years ago the Company reorganized its track operations, reducing the number of regular sectionmen and increasing the use of extra gangs. These extra gangs are used on a seasonal basis usually, it would seem, to perform some particular type of work along a distance of track where they may, in some cases, work with a series of section crews in succession. Thus, there are ballast, rail, tie and surfacing gangs among others. These gangs use various sorts of equipment not previously used by section crews for the same work. Thus, the mechanized tie gang performs in a specialized way a type of work which was only one of a number of tasks done by section crews.

The work of a section crew has included and may still include tie renewal work. Regardless of the tasks they perform, section crew members are entitled to section rates of pay in accordance with the applicable provisions of the collective agreement. The mere fact of being engaged in tie renewal work, however, is not sufficient to establish that one is a sectionman. In the instant case the employees concerned work as labourers (the gangs include other classifications not in issue here) on “large temporary extra gangs” of the sort described above. Such employees are not covered by the collective agreement, as is clear from Article 1.2:

1.2 Labourers in extra gangs, unless those engaged practically all year round, shall not be considered as coming under this agreement.

The employees concerned were hired as and worked as labourers. The sort of work they did was, as has been noted, related to some of the work which might be done by sectionmen. It remained nevertheless labourers’ work, and it was done on extra gangs. These gangs were not, from the material before me, “engaged practically all year round”. Thus, whether or not the employees concerned had worked a probationary period, they were not entitled to section rates. They were not trackman A/track maintainers nor were they trackmen B. Their work was that of extra gang labourers.

Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR