

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 756

Heard at Montreal, Wednesday, May 14, 1980

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION (T)**

**EX PARTE**

### **DISPUTE:**

Yard crew consist at Oshawa, Ontario.

### **COMPANY'S STATEMENT OF ISSUE:**

Inability of the United Transportation Union to agree with the Company that adequate safety can be maintained with a reduced consist of one Yard Foreman and one Yard Helper for crews working in the territory described herein under at Oshawa, Ontario:

Zone A – track A04;

Zone B – tracks B07 & B08;

Zone C – tracks C95, C96, C98 & C99;

Zone G – all tracks;

Zone J – all tracks;

Zone L – tracks L13, L25, L27, L28, L30 & L31.

### **FOR THE COMPANY:**

**(SGD.) S. T. COOKE**

**ASSISTANT VICE-PRESIDENT, INDUSTRIAL RELATIONS**

There appeared on behalf of the Company:

A. J. DelTorto	– Consultant, Labour Relations, Montreal
R. Birch	– System Labour Relations Officer, Montreal
E. Johannesson	– Co-ordinator Special Projects, Transportation, Montreal
M. Delgreco	– Regional Labour Relations Officer, Toronto
W. A. McLeish	– Labour Relations Assistant, Toronto
A. E. Bartlett	– Superintendent, Toronto
M. R. Robinson	– Administrative Officer, Transportation, Toronto
J. M. Tobin	– Assistant Superintendent, Oshawa
F. C. Wannamaker	– General Yardmaster, Oshawa
G. W. McGraw	– Communication Analyst, Radio, Toronto

And on behalf of the Brotherhood:

G. E. McLellan	– General Chairman, Toronto
R. T. O'Brien	– Vice President, Ottawa
A. J. O'Hare	– Local Chairman, Oshawa
P. A. Corcoran	– Vice General Chairman, Toronto
J. A. McLean	– Secretary, General Committee, Ottawa
H. Manchester	– General Chairman, Winnipeg
R. Proulx	– General Chairman, Quebec City
F. Oliver	– General Chairman, Toronto

## AWARD OF THE ARBITRATOR

The Company seeks the reduction of the three-man crews heretofore used in certain zones of its Oshawa Yard. The Union has, as contemplated by article 113 of the collective agreement, given specific reasons why, in its opinion, adequate safety cannot be maintained on certain of the moves involved with a two-man crew. The issue before me is whether or not adequate safety can be maintained with the proposed crew consist reduction.

The Union has referred to moves in five of the zones in which crew reduction is sought. In one case, that of Zone G, the objection is also a general one. I shall deal with each of these designated moves in turn, dealing lastly with the matter of Zone G. Before considering the particular moves, however, there are two matters of general application which should be considered. The first involves the use of radios, and the second involves some general considerations as to the relationship between efficiency and "adequate safety".

In the previous cases involving the matter of crew consist size, much has turned on the ability of crew members on the ground to pass hand signals to a crew member or an engineman in the cab of the train. In the instant case, the Company relies on the ability of crew members to pass signals by radio communication with the cab of the engine. If this method of communicating signals can indeed be required and relied on, then certainly the matter of intervisibility for the purpose of passing hand signals will be of greatly diminished importance. It must be remembered, however, that sight lines, if no longer so important for the purpose of communication, will remain of vital importance for the purpose of control of the movement, that is for the purpose of determining what signal is to be communicated (by whatever method) to the engineman.

Article 160 of the collective agreement, which is a new provision, deals with the "use of communication systems". It sets out the recognition by the parties that "the use of the Railway radio communication system is a part of the duties" of employees covered by the agreement. Article 160.2 provides that "In the application of this Article employees will carry portable radios and use radios to give and take information as required in the performance of their duties". The article goes on to deal with the type of radios to be supplied, and to make it clear that employees are not responsible for accidents caused by failure of radio equipment. Article 160.7 provides that "when radios are used by a yard or transfer crew in the performance of their duties each member of the crew will be supplied with a radio".

In my view, the effect of these provisions is to permit the Company – subject to its compliance with the article – to require employees, including members of yard crews such as those involved in this case, to make use of radios for various purposes, including the communication of signals relating to train movements, signals that would otherwise have been given by hand. With respect to a number of the moves called in question in this case, the Company has answered that radio communication of signals will obviate the need for a third crew member to pass signals. Communication by radio is direct communication between the engineman and the individual members of the yard crew. There is no need for signals to be relayed. There is of course a possibility of failure in any system, including that of hand signals. In the case of railway yard operations, noise in the cab of the engine may interfere with signal reception. Such breakdowns in communication can generally be expected to be occasional in nature and brief in duration. The Uniform Code of Operating Rules provides, of course, for the situation where no signal is received. Having regard to this, and to the provisions of the collective agreement, it is my conclusion that the supply of radios and requirement of their use will often obviate the need for a third crew member to pass hand signals. It may be, however, that the demands of safety will require the presence of a third crew member in certain circumstances.

In many instances the Company, in this as in other cases, has argued that inefficiency or loss of productivity (due to slower movements, or a limitation on the number of cars moved) is a loss which it may bear if it considers it reasonable to do so, and that the only question is that of safety. In a sense this argument has a certain validity. Most train movements could very likely be carried out safely by a reduced crew, although that would involve such a sacrifice in terms of time and in terms of the number of cars moved, that it would often be quite impractical. More importantly, however, I think that there is a relationship between the concept of efficiency and that of safety. The conduct of an inefficient operation, or the reduction of productivity have adverse effects, in my view, on the safety of the operation itself. Safety is a function not merely of actual movements of equipment over defined terrain, but also of the attitudes of those controlling the movements as well as of extraneous factors. In my view the natural and proper desire to increase efficiency and productivity places strains on safe operation. Existing operations with more or less established norms of efficiency and productivity can accommodate these strains, but where efficiency and productivity are cut back in return for a reduction of crew size there may, in some contexts, be a tendency for them to

reassert themselves in the form of pressure for haste, or for inclusion in a movement of more cars than might really be proper. These remarks are of course very general. There have been many cases where a reduced crew has been allowed on the basis of a limitation on the number of cars handled in certain moves, and where such a limitation is no doubt quite practical. In some circumstances however, as was pointed out in **Case No. 440**, there is a certain relationship between efficiency and safety.

I shall now deal with the particular moves indicated by the Union as not being ones which could be performed safely by a reduced crew. The first of these involves track A04 in Zone A. It is suggested that the CPR overpass at the east end and the track configuration would require shorter cuts of cars than those normally handled. The track layout and photographs of the area, however, satisfy me that while there might occasionally be a difficulty in passing a hand signal, this is an instance in which the use of radio would be an appropriate and proper method of communication with respect to train movements.

The same conclusion applies in the case of movements on tracks B07 and B08 in Zone B. For visual signals, a crew member must go some distance from the movement, and if the crew is reduced, this would effectively reduce crew size even further for that period. Again, however, radio communication is perfectly appropriate.

In Zone C, the Union refers to tracks C95, C96, C98 and C99 as involving a problem where cars have to be shoved. In general, however, movements on these tracks can be arranged so that cars need not be shoved. There is a public crossing, but the requirements of the Uniform Code of Operating Rules in that regard can be met by a reduced crew. If conditions should exist affecting sight lines for visual signals, this is an appropriate area for radio communication.

In Zone J the Union referred to two areas where it considered a reduced crew ought not to operate: one was at Houdaille Industries and the other at Westcane Sugar. In each case the Union's concern relates particularly to the fact that a public crossing – and at Houdaille Industries, tracks down the centre of a street – are involved. The problems that arise in this regard are those which arise whenever there is contact between railroad operations and other travelled thoroughfares, or where there may be contact with the public. The Uniform Code of Operating Rules makes precise provision for such matters, and a reduced crew is able to comply with those Rules.

In my view, it is possible for the Company to carry out its operations on all of the trackage mentioned above using a reduced crew and with maintenance of adequate safety.

A more difficult question arises with respect to operations in Zone G. The Union refers not only to certain specific groups of tracks, but also to the area as a whole. A view was taken of this area, in the presence of representatives of the parties. Although the area was not particularly congested at the time the view was taken, I am sure that there are times when it is so, and having regard simply to the overall characteristics of the zone, the nature of the trackage and the nature of the other activities in the area, I would have concluded – were it not for the provisions of article 160 of the collective agreement – that a reduced crew could not operate with maintenance of adequate safety. Even with a reduced crew the majority of moves could be made safely with visual signals, but there would be a substantial number in which that could not be done adequately. With the use of radio communications, however, the work of the assignment can be safely performed by a reduced crew, although the crew will no doubt find the work more difficult at times.

As to the particular movements referred to by the Union, those on tracks G2 and G2A and on tracks G4, G4A and G4B, again, while I might have considered that there would be many occasions when visual signals could not effectively be relayed to the engineman by a reduced crew, I think it is clear that direct communication with the engine by yardmen using radios could permit the safe movement of cars by a reduced crew.

For all of the foregoing reasons, therefore, it is my conclusion that the crews in question may be reduced with maintenance of adequate safety where radio communication is provided for. The request of the Company is accordingly allowed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**