

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1015

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of spare trainman A. W. Baker for miles lost because he was not called to replace an injured rear-end trainman on a full crew in reducible crew territory, June 4, 1982.

JOINT STATEMENT OF ISSUE:

On June 4, 1982, Extra 8734 South, manned by a full crew, was running on the Shogomoc Subdivision between Aroostook and McAdam. The Shogomoc Subdivision has been declared reducible. Rear trainman F. G. Bolger sustained an injury enroute. He was not replaced and the train continued to its destination with a reduced crew. The reduced crew subsequently made a short turnaround trip out of McAdam on territory declared reducible and then straight-away trip back to Aroostook.

The Union contends that trainman A. W. Baker, a protected freightman standing first out on the common spareboard at Aroostook, should have been called to replace trainman Bolger in accordance with Article 9, Rule 6, and claim that Mr. Baker should be paid the wages he would have earned as a member of the crew.

The Company has declined the Union's claim.

FOR THE EMPLOYEES:

(SGD.) B. MARCOLINI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, CP Rail, Montreal
B. P. Scott – Labour Relations Officer, CP Rail, Montreal
J. H. Blotsky – Assistant Supervisor, Labour Relations, CP Rail, Montreal

And on behalf of the Employees:

B. Marcolini – General Chairman, UTU, Scarborough
R. T. O'Brien – Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

Article 9 of the Collective Agreement deals with consist of road crews, and Rule 6 thereof is as follows:

6. A brakeman's position on a "reducible crew" may be discontinued at any time hereafter, provided that "protected freight men" shall have the right to work in their seniority turn on any brakeman's position in any class of assigned or unassigned freight service on their seniority district

in which, under the rules or practices in effect prior to March 7, 1979, the use of two brakemen would have been required, subject to the following:

(a) A trainman whose seniority entitles him to a conductor's position or temporary vacancy of six days or more or a temporary vacancy known to be of six consecutive days or more, shall not be permitted to fill a brakeman's position if as a result thereof the Company would be deprived of reducing a "reducible crew" in road freight service. In these circumstances the junior "protected" conductor not holding a conductor's position or temporary vacancy, as the case may be, will be required to fill a conductor's position or temporary vacancy.

(b) There shall not be any preference as between the head-end brakeman's position and the rear-end brakeman's position where such practice may now be in effect, on crew or crews declared reducible pursuant to the provisions of this Article if such preference results in the filling of a vacancy on such crew by an unprotected man.

(c) When additional positions are created in a pool of crews in which crews are reducible and which would otherwise require the employment of unprotected men, such positions shall be filled, to the extent available, by "protected freight men" then filling reducible brakemen's positions in such pool of crews.

(d) Should no application be received from a protected freight man for a permanent vacancy on a reducible position, such position need not be filled until claimed by a "protected freight man" who is later displaced or who has been reduced or who was absent at the time the vacancy occurred. Such reducible position shall again be bulletined in assigned service and made available in unassigned service at each general advertisement of assignments and the same conditions will apply. Arrangements may be made between the Local Chairman and Local Officers to post notice advising of permanent vacancies in unassigned service.

(e) When no application is received from a "protected freight man" for a temporary vacancy of 6 days or more on a reducible position, such position need not be filled for the duration of the temporary vacancy until claimed by a "protected freight man" who is later displaced, or who has been reduced or who was absent at the time the temporary vacancy occurred. However, a temporary vacancy of less than 6 days in a reducible position will be filled by the first out available "protected freight man" on the spareboard. This will not constitute a run-around of unprotected freight men on the spareboard.

"Protected freight man" is defined in Rule 5 of Article 9 as follows:

5. For the purpose of this Article, an employee who has a seniority date as a trainman/yardman on or prior to March 7, 1979, shall be known and designated as a "protected freight man".

When called, the crew in question was not a reduced crew, but a full crew. It was, however, "reducible", and it was in fact reduced when one of its members was injured en route. The grievor was a "protected freight man", and would have the right to work – in his seniority turn – subject to the provisions of Rule 6 of Article 9.

This matter is to be determined, of course, in accordance with the provisions of the Collective Agreement, but it is a fair general summary of those provisions to say – as was said by Counsel for the Company in the hearings which led to the provisions in question that for the "protected" employee the crew reduction provisions do not exist. Such statement is, however, a general one, and the matter is to be determined in light of the precise provisions of Article 9. And to the extent that it may be proper to take into account what was said at the hearings which ultimately led to the provisions in question, reference may also be made to the "fact sheet" or working paper which, in part at least, set out certain common understandings with respect to the implementation of a reduced crew rule. One of these understandings was that if a protected freight man on a reducible (but not reduced) crew booked sick at an away-from-home terminal, no replacement need be called for him and the crew would operate back to the home terminal as a reduced crew.

What occurred in the instant case is certainly within the general intent, if not the precise words, of the understanding just mentioned. The case of the employee who is taken sick or injured en route, and who then cannot work out of the away-from-home terminal is, if anything, clearer than that of the employee who actually books sick.

There is no difference in substance between the two situations. In the instant case the crew made an extra trip (a "short turnaround" but nevertheless time-consuming trip) out of the away-from-home terminal. This trip was on "reducible-crew" territory" and did not, from the material before me, result in any employees being run-around or in any other violation of the Collective Agreement.

While the grievor would have been entitled to be called (as he was first-out) for the run in question had a crew member become sick or injured before it left the home terminal, the Collective Agreement (read in the light of materials properly considered for its interpretation did not require that the grievor be called as a replacement when events en route created a reduced crew. The grievor, it may be noted, was not affected with respect to his general right to be called in turn, and was not run-around.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR