CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1783

Heard at Montreal, Wednesday, May 11, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

By Bulletin 19A dated November 3, 1986, the Company notified certain track employees on the Northern Ontario Division, Great Lakes Region, that their rest days were changed from Saturday and Sunday to Wednesday and Thursday.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that the change in rest days constitutes a violation of Article 5 of Agreement 10.1. The Union requests that the employees affected by this change be paid the overtime rate for all hours worked on Saturdays and Sundays from the date of the change to the present.

The Company denies the Union's contentions and claim.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

G. Blundell	– Labour Relations Officer, Montreal
J. Luciani	– Counsel, Montreal
D. Defoe	– Engineering Officer, Toronto
G. Dubé	– Maintenance Supervisor, Hornepayne
R. Paquette	– Senior Analyst, Montreal
A. Watson	– Labour Relations Trainee, Montreal

And on behalf of the Brotherhood Union:

M. Gottheil	– Counsel, Assistant to the Vice-President, Ottawa
R. A. Bowden	– System Federation General Chairman, Ottawa
J. Rioux	– General Chairman, Hornepayne

AWARD OF THE ARBITRATOR

The material establishes that in August of 1986 the Company and the Brotherhood engaged in discussions respecting the implementation of organizational changes to the Northern Ontario Division of the Great Lakes Region. Among other things the Company sought to change work cycles applicable to a number of employees on the Ruel and Caramat Subdivisions. The Company's proposal of a ten and four cycle, whereby section crews would work ten days with four days of rest, was met by a Brotherhood counterproposal of an eight and six cycle. The parties were unable to agree, and by Bulletin 19A, dated November 3 1986, the Company advised all employees of a change of work cycle whereby a substantial number of the members of the section crews would be required to work a five and two cycle, with Wednesday and Thursday as their rest days.

The Brotherhood submits that the Company's action is in violation of Article 5.1 of Collective Agreement 10.1, which provides as follows:

> **5.1** The rest days shall be consecutive as far as is possible consistent with the establishment of regular relief assignments and the avoidance of working an employee on an assigned rest day. Preference shall be given to Saturday and Sunday and then to Sunday and Monday. In any dispute as to the necessity of departing from the pattern of two consecutive rest days or for granting rest days other than Saturday and Sunday or Sunday and Monday, it shall be incumbent on the Company to show that such departure is necessary to meet operational requirements and that otherwise additional relief service or working an employee on an assigned rest day would be involved.

It is not disputed that the foregoing provision reflects a negotiated norm of two consecutive rest days, with preference to be given to Saturday and Sunday and, secondly, to Sunday and Monday. The sole issue is whether the departure from that norm in the instant case can be said to be justified as "necessary to meet operational requirements" within the meeting of Article 5.1.

The subdivisions in question, which are located north of Lake Superior, are among the most isolated in the Company's entire system. In many cases employees on these subdivisions live in Company owned dwellings while at work, and have homes a considerable distance from their work assignments. The Company argues that giving all of the employees Saturday and Sunday off, or a combination of Saturday and Sunday and Sunday along with Monday, would prevent the Company from providing seven day coverage, leaving it vulnerable in the event of weekend emergencies. The Company further submits that the system of staggered rest days provides an overlap of working time during which the foremen of the inspection repair crews can better communicate with the foremen of the wayside maintenance crews with respect to the status of the roadway on the subdivision.

The final justification put forward by the Company is the viability of operating a specialized passenger train which runs between Capreol and Longlac. This train, known as the "Engineering Special", transports crew members between their homes and their work locations, distances which are sometimes as great as three hundred or four hundred miles. It does not appear disputed that if the Company were restricted to the work cycle described in Article 5.1, with days off limited to Saturday and Sunday, or Sunday and Monday, it would be impossible to have a single train make the necessary run from Capreol to Longlac and return, a trip which takes fourteen hours each way, because a train so scheduled would be without sufficient time for servicing and maintenance at the turnaround points.

Transportation by means of the Engineering Special has existed for a number of years, but its importance has increased with the gradual reduction of regular passenger service on the Great Lakes Division between Armstrong and Capreol. When passenger trains were more frequent members of section crews were able to travel between their homes and their work assignments with less difficulty. The reduction in passenger service, however, created difficulties for both employees and the Company with respect of the access of section crews to some of the work locations in the area, a significant portion of which is not accessible by road.

The Brotherhood submits that seven day a week coverage on the area in question is not necessary, stressing that it never has been utilized in the past, is not used on any other part of the Company's system and is not justified by any documented evidence demonstrating any substantial difficulty in coping with weekend emergencies. It further submits that the communication of information between the WMS and IRS Foremen is not a justification to depart from the negotiated terms of Article 5.1. Lastly, the Brotherhood argues that the accommodation of the scheduling for the Engineering Special to transport employees is not a measure "necessary to meet operational requirements"

within the meaning of Article 5.1, and does not, there fore, constitute justification for the staggered work cycle implemented by the Company.

On the material before me I am inclined to agree with the Brotherhood with respect to the issue of communication between the wayside maintenance foreman and the inspection and repair foreman as a justification for the staggered work cycle. I am likewise inclined to agree with the Brotherhood that the evidence adduced in the instant case falls short of establishing, on the balance of probabilities, that a shortage of availability of maintenance crews for weekend emergency work was a substantial threat to operational requirements. The Arbitrator accepts the Company's position that serious jeopardy to its operations through a lack of maintenance manpower on weekends would establish a risk to operational requirements sufficient to trigger to the provisions of Article 5.1. However, fuller and better evidence of such a situation would be required than was adduced in the instant case. Through the evidence of Mr. G. Dubé, Maintenance Supervisor at Hornepayne, the Arbitrator was made aware of some four occasions when weekend emergency repairs where delayed because of difficulties experienced by the Company in attempting to locate employees at their homes on their days off. While the resulting inconvenience to the Company is not to be minimized, its interests must be balanced with those of the employees which are protected by Article 5.1. By Mr. Dubé's own account the negative impact in the cases which he related was a delay in response time: while a normal response time in emergency circumstances might be one or two hours, on the occasions in question which he related the response time was extended to four or five hours, and in one case eight hours. While the impact of such delays as they might affect the movement of trains on the Company's system is appreciable, the recall by one witness of some four incidents over a period of years falls short, in the Arbitrator's view, of the standard of evidence that would sustain a conclusion that depriving employees of days off on Saturday and Sunday, or Sunday and Monday, a practice which has apparently operated in the region in question for years without difficulty, would be required.

I turn to consider the issue of the scheduling of the Engineering Special. On this issue the Arbitrator has more difficulty with the Brotherhood's case. It is not disputed that to maintain operations on the subdivision in question it is essential that section crews have an efficient and dependable means of transportation from their homes to their work locations. While it is true that a number of the members of section crews reside at or near their place of work, for substantial numbers of them that is not the case. It does not appear disputed that the reduction in passenger service, and the irregularities experienced with employees previously attempting to travel aboard freight trains, did justify the Company's decision to implement a special train, apparently consisting of two cars, to transport the members of section crews along the fourteen hour route between Capreol and Longlac. The issue becomes whether that development can be characterized as an initiative "necessary to meet operational requirements" within the meaning of Article 5.1. While it is true that the phrase within the article is used in terms of justifying the Company's departure from the established cycle of days off, it appears to the Arbitrator that in the circumstances of this case that question, and the question of the need to operate the special passenger train, become one and the same.

The Arbitrator has difficulty with the submission of the Brotherhood that the cost of operating the Engineering Special is irrelevant to the Company's operational requirements. Implicit in the Brotherhood's position is that the addition of a second train, at an estimated cost of an additional million dollars a year, is not a factor to be taken into account. To meet its operational requirements the Company is obligated to deploy section crews across this uniquely remote area. With the gradual reduction in local passenger service it became necessary to provide an alternative special train for the transportation of a substantial number of track maintenance employees between their homes and their work locations. While it appears that the Engineering Special has in fact operated for a considerable number of years, originating initially at Toronto, there seems little doubt that the decline in passenger service in more recent times has served to convert the train from a convenience to a necessity.

It is not disputed that the Company must incur some cost to ensure the presence of maintenance section crews in these remote locations. It was not suggested that the Company should charter float planes or helicopters to transport maintenance employees to their work locations and return them to their homes. Implicit in that is that there is a reasonable limit to the expense which the Company must be required to incur in the transportation of staff. In the Arbitrator's view it is within the legitimate business purposes of the Company to dedicate and schedule a single train to transport track maintenance personnel in a way that ensures their presence in remote locations. In that sense I am satisfied that the scheduling of the single Engineering Special put into operation by the Company is a step which it was required to take to ensure that its operational requirements would be met. The Arbitrator is satisfied that a single special train could not be utilized to service these locations if the cycle of days off described in Article 5.1 must be adhered to. I am compelled, therefore, to conclude that the impact of the transportation scheduling of the

Engineering Special on the cycle of days off available to the employees within the maintenance service in those locations is a necessary result of the kind contemplated within Article 5.1.

For these reasons the Arbitrator must conclude that the establishment of the cycle of rest days to include Wednesday and Thursday for a certain number of employees was "necessary to meet operation requirements" within the meaning of Article 5.1 of the Collective Agreement. The grievance must therefore be dismissed.

13 May 1988

(signed) MICHEL G. PICHER
ARBITRATOR