

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1958

Heard at Montreal, Wednesday, 11 October 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Company changed the rest days of the railway gangs working on the Lakehead Division from the bulletin rest days of Saturday and Sunday to Friday and Saturday.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1.) The employer violated Section 5.1 concerning the assignment of rest days by; a) failing to provide that such departure is necessary to meet operation requirements; b) failing to establish that additional relief service or working an employee on an assigned rest day would be involved; before the change of rest days was implemented. 2.) The reasons justifying the change in rest days was consequently supplied approximately 7 days after notice was given to the employees affected re-establishing Saturday and Sunday rest days.

The Trade Union requests that all employees affected be paid for all losses.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:

(SGD) M. L. MCINNES

SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. M. WHITE

GENERAL MANAGER, OPERATIONS & MAINTENANCE WEST, HHS

There appeared on behalf of the Company:

L. Guenther	– Assistant Supervisor, Labour Relations, Vancouver
B. Mittleman	– Counsel, Montreal
M. E. Keiran	- Assistant Supervisor, Labour Relations, Vancouver
L. G. Winslow	– Labour Relations Officer, Montreal
R. Kaplanis	– Witness

And on behalf of the Brotherhood:

M. Gottheil	– Counsel
G. Kennedy	– General Chairman, Vancouver
R. Dellaserra	– General Chairman, Montreal
D. Lacey	– General Chairman, Ottawa
K. Deptuck	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the instant case the Company has discharged the onus of establishing that the change of bulletined rest days from Saturday and Sunday to Friday and Saturday was pursuant to a necessity to meet

operational requirements. It appears beyond dispute that in both 1987 and 1988 the unloading of rail car shipments of grain at Thunder Bay on Saturday imposed pressure on the Company to ensure that an adequate supply of loaded grain cars was forwarded to the Thunder Bay terminal in sufficient time. The presence of road maintenance gangs working on the Lakehead Division on Friday and Saturday would, to some degree, slow the flow of rail traffic from the prairies to Thunder Bay. The material and information provided by the Company confirms that the Grain Transportation Agency and the grain elevator companies at Thunder Bay were dissatisfied with the volume of grain traffic which both the Company and CN moved into Thunder Bay in the 1987 season. In early 1988, with the anticipation of a heavy demand for grain movement through Thunder Bay, the Company came under still greater pressure to improve its performance in the new year. It is common ground that the heaviest months of grain traffic are May, June and July.

A number of initiatives were undertaken by the Company to satisfy its customers' demand. Among other things it encouraged the Canadian Wheat Board to utilize directional loading to either Vancouver or Thunder Bay and to take steps to dispatch wheat to the nearer of the two ports, to the greatest extent possible. Other measures included extra efforts to return bad order cars to service, the cleaning and transfer of certain hopper cars from potash service to grain service, steps to prompt the faster loading and releasing of grain cars at prairie elevators and the apparently unprecedented decision to run a train on any subdivision with as few as thirty loads of grain. The Company further canvassed its divisions to produce plans to reduce the turnaround times of cars in grain service from an average of fifteen days to a preferred target of thirteen and one-half days. In other words, the object was to decrease the time required to move an empty grain hopper car from Thunder Bay to a prairie elevator for loading then back to the port to be unloaded and, finally, departing the port for return to a prairie elevator.

The unloading of cars into grain elevators at Thunder Bay on Saturday was also an option which would enhance customer service. While this was not a new initiative, having been utilized in 1987, the Company determined to do all in its power to further facilitate the success of Saturday unloading. For that reason, having examined the possibilities, it determined that four of eight work gangs operating on the Lakehead Division should have their rest days changed from Saturday and Sunday to Friday and Saturday. The Company's entitlement to take that action turns on the application of Section 5.1 of the Collective Agreement 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 Railway 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.

The cases previously heard in this Office dealing with the application of Article 5.1 confirm that where the Company can establish that a temporary condition requires an adjustment in days off as a means of meeting customer needs with a reasonable level of productivity and efficiency, no violation of Article 5.1 is disclosed. In **CROA 700**, Arbitrator Weatherill made the following observations:

This provision does not prohibit the Company from assigning days other than Saturday, Sunday or Monday as rest days. Rather, it imposes on the Company the burden of justifying the assignment of other days as rest days, where the necessity of such is disputed. In the instant case, that burden has been met. I am satisfied from the material before me that the change in question, which was temporary, was necessary to meet operational requirements (the crane was assigned to assist a work train gang which, in order to work when fewer trains were operated and regular section forces were off, worked weekends) and that, had the change not been made, working on an assigned rest day would have been involved.

The question of what is or is not an operational requirement sufficient to trigger the exception provided in Article 5.1 is inevitably a matter of debate which can only be resolved on a case by case basis, having regard to all of the pertinent facts. In the instant case the Arbitrator is not persuaded that it cannot be said that there was an operational requirement to facilitate the delivery of grain to Thunder Bay simply because more inefficient volumes of delivery had been tolerated in years prior. It is, in my view, within the legitimate objectives of the Company to streamline operations with a view to responding to customer needs, particularly in the circumstance of a temporary busy period, such as is disclosed in the instant case. It is common ground that the change in days off was first

implemented in the week of April 18, and was discontinued on or about June 11, to correspond roughly with the period of time that the grain elevator companies of Thunder Bay engaged in Saturday unloading. In the Arbitrator's view the Company's response, which was part of a larger initiative to increase the overall efficiency of grain delivery in that peak period, was a legitimate response to operational requirements as contemplated within the meaning of Article 5.1 of the Collective Agreement. While it may be true that Saturday unloading ended in the week of May 30th, the unchallenged representation of the Company is that it did not have accurate advance notice of grain volumes to come. In that circumstance the extension of the change of days off for a further two weeks cannot be viewed as out of keeping with operational requirements.

For the foregoing reasons the grievances must be dismissed.

October 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR