CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2257

Heard at Montreal, Thursday, 14 May 1992

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Entitlement to and calculation of Maintenance of Basic Rates payments as provided for in the Memorandum of Agreement in respect to the manning of trains on the Nelson Subdivision.

JOINT STATEMENT OF ISSUE:

On May 14, 1990, a Memorandum of Agreement was signed by the parties pursuant to the Material Change provisions contained in Article 47 of the Collective Agreement. Provision was made in that agreement to maintain the rates of employees who were adversely affected by the change in the manner in which trains on the Nelson Subdivision were crewed.

Claims for Maintenance of Basic Rates for employees who continued to work subsequent to the change in crewing procedures and were later laid off, as well as for Maintenance of Basic Rates for employees who invoked the rest rule stipulated in Article 26, have been declined by the Company.

The Union contends that Item 3(6)(c) of the agreement applies with respect to lay-off and rest as it states "For the purpose of this Clause, the term 'basic weekly pay' is defined as follows:"

Item 3(6)(c)(ii) states:

> For an employee in road service, including employees on common spareboards, the 'basic weekly pay' shall be on one fifty-second (1/52) of the total earnings of such employee during the twenty-six full pay periods preceding his displacement or lay-off.

The Union further contends that rest was included in the calculation of previous earnings to establish the calculation for the Maintenance of Basic Rates of 1/52 to the total earnings for the twenty-six full pay periods preceding his displacement.

It is the position of the Company that Maintenance of Basic Rates were not payable to employees while laid off and that it was proper to reduce the amount of Maintenance of Basic Rate payment by the earnings the employee on rest would otherwise have earned.

FOR THE UNION:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. WEBB
FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

M. E. Keiran	– Manager, Labour Relations, Vancouver
B. P. Scott	– Labour Relations Officer, Montreal
R. E. Wilson	– Labour Relations Officer, HHS, Vancouver
R. A. Colquhoun	– Manager, Labour Relations, Montreal
G. C. B. Smith	– Senior Advisor, Industrial Relations, Montreal
G. Chehowy	– Labour Relations Officer, Montreal

And on behalf of the Union:

L. Schillaci	– General Chairman, Calgary

AWARD OF THE ARBITRATOR

By agreement of the parties, the only issue which remains to be resolved by the Arbitrator in this grievance is the contention of the Union that employees who were laid off subsequent to the implementation of the material change, as a result of a strike at a mining company serviced by the railway, are entitled to the protection of the Memorandum of Agreement. The Union's position is that although the layoffs were not directly caused by the material change, and came at some time later because of the mine shutdown, the employees who were impacted by the loss of work at that time had fewer work opportunities available to them by virtue of the ongoing impact of the reduction in work for Nelson crews occasioned by the material change. To put it differently, its representative submits that the material change had a "delayed impact" on the employees affected by the layoffs due to the mine strike. It submits that in that circumstance the employees so affected should be entitled to the layoff benefits of the memorandum of agreement of May 14, 1990. The Arbitrator has substantial difficulty with that submission. The purpose of article 47 of the collective agreement, and of the memorandum of agreement negotiated in respect of material changes in the manning of trains on the Nelson Subdivision is to identify employees affected and to minimize the adverse effects on those employees caused by the material change implemented by the Company. Employees who are laid off as a result of the material change, presumably because they are unable to hold work, are entitled to the layoff benefits provided in clause 4 of the memorandum of agreement. Those who continue to work, which presumably would include the employees who were later laid off because of the mine strike, are given other protections, including maintenance of basic rates, to protect their job security interests.

An agreement such as the Memorandum of Agreement negotiated in this case, however, is not intended as a document to provide protection against all possible eventualities and occurrences independent of the material change which gives rise to the agreement in the first place. When such agreements are negotiated various provisions may be put into place to protect the job security of employees, or minimize the adverse effects upon them. These may include early retirement opportunities, benefits to facilitate transfer to another location, rate protection, enhanced layoff benefits and lump sum payments. Employees are often given options with respect to the benefits which best suit their needs, depending on their seniority. However, once those options are exercised and the memorandum of agreement has been implemented, it is generally understood that the employees may always be subject to other events that may independently affect their job security.

The presumption underlying article 47 of the collective agreement is that the parties negotiate the minimizing of adverse impacts resulting from material change at a time when the employees impacted can be identified and when adverse impacts upon them are reasonably known and quantifiable. The process so contemplated does not provide for the contingency of unforeseen, indirect impacts, such as those giving rise to the claim in this case. If it were otherwise the agreements negotiated under article 47 could never be finalized or costed by the parties with any certainty. In the Arbitrator's view, that is plainly not the intention of the parties' agreement in respect of material change.

The importance of certainty and the distinction between immediate and indirect impacts was touched upon by Arbitrator Weatherill in the award between **Canadian Pacific Ltd. and United Transportation Union** concerning the application of a special agreement pursuant to the **Railway Passenger Services Adjustments Assistance Regulations**, dated November 10, 1983. At pp. 10-11, in considering the scope of employees "adversely affected" within the contemplation of the Special Agreement he commented as follows:

> ... The class of persons contemplated as "adversely affected" in the Special Agreement as in the Regulations, consists of railway employees.

> Even within that constituency, however, it is necessarily the case that the "effects" of a reduction of passenger services with the attendant abolition of positions may be substantial, diverse and difficult to identify. In the long run, there is less work to go around, less use of equipment, less maintenance, and so on. The "long run" will, however, also be affected by the continuing variations of ordinary business operations and, in the railway industry, by fluctuations of traffic. It may, thus, be impossible to determine whether or not some future reduction – or indeed any perceived insufficiency of earnings – is attributable or not to a particular change in operations. The cases of those whose positions were abolished and who were unable to hold other jobs are clear, as are the cases of those displaced by the exercise of seniority in such circumstances. It is, however, not clear that persons who did not hold regular positions should be said to be "adversely affected" within the meaning of the Special Agreement, where the effect on their work or earnings is only indirect. While, in a general way, such persons may appear to be "affected" by the change (as, in a general way, were many others), they do not, in my view, come within the class of those contemplated by the Special Agreement as entitled to benefits.

In the Arbitrator's view, what the instant case discloses is that employees have been negatively impacted, but that the event that has caused that impact is a fluctuation in traffic occasioned by a work stoppage at a customer's mine site. While it may be true that the alternatives available to the employees so affected may be reduced by virtue of the earlier material change in operations on the Nelson Subdivision, that matter was dealt with finally and comprehensively in the negotiation of the Memorandum of Agreement. In the result, on the occasion of the reduction in traffic those employees cannot be said to be once again adversely affected by the earlier material change in the sense contemplated in article 47 of the collective agreement, or in the Memorandum of Agreement of May 14, 1990.

For the foregoing reasons the grievance must be dismissed.

May 15, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR