

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2900

Heard in Calgary, Tuesday, 11 November 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The application of article 42, clause (a), paragraph one, of the collective agreement.

JOINT STATEMENT OF ISSUE:

Article 42, clause (a), paragraph one states:

Assignments, other than work trains, will be bulletined specifying the home terminal, initial and objective terminal for each trip, territory over which the assignment is to perform service, starting time and days of operation. So far as is practicable, assignments will start at the bulletined starting time, except that an assignment may be started at a time later, but not earlier than that specified in the bulletin unless otherwise mutually agreed. When bulletined starting time is changed more than three hours, the assignments will be re-bulletined.

The Council contends that an assignment must start at the bulletined starting time or not more than three hours past that time. If the Company desires to start the assignment past that three hour window of opportunity, then they must either re-bulletin the assignment or obtain agreement from the Council to do so.

The Company contends that calling an assignment later than the bulletined starting time is contemplated in the clause and disagrees that the starting time of an assignment on any individual day can only be extended three hours beyond the bulletined starting time.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. E. WEBB
FOR: DISTRICT MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

K. E. Webb	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
R. M. Smith	– Labour Relations Officer, Calgary

And on behalf of the Council:

L. O. Schillaci	– General Chairperson, Calgary
B. L. McLafferty	– Vice-General Chairperson, Moose Jaw
J. K. Jeffries	– Vice-General Chairperson, Cranbrook
E. DeCredico	– Vice-General Chairperson, Nanaimo
J. Knowles	– Vice-General Chairperson, Calgary
D. H. Finsson	– Secretary, Saskatoon

AWARD OF THE ARBITRATOR

This dispute concerns the interpretation of the last sentence of article 42, clause (a), paragraph one. The position of the Council is that on a case by case basis, when a starting time is changed more than three hours, the Company is compelled to re-bulletin the assignment. In other words, by the Council's interpretation, when unforeseen circumstances, or the requirements of the customer, might require a delay in the starting time of a given assignment beyond the three hour period, the Company is compelled to re-bulletin the assignment or obtain agreement to the contrary from the Council. The employer's interpretation is different. It submits that the final sentence of the paragraph in question contemplates only the starting time of an assignment being changed for more than three hours on a permanent basis.

Upon a careful examination of the terms of article 42, clause (a), paragraph one, and the bulletining provisions of the collective agreement, the Arbitrator is compelled to prefer the interpretation of the Company. It does not appear disputed that the bulletining requirements which would come into play if the Council's interpretation is correct appear in article 36(f) of the collective agreement which provides, in part, as follows:

36 (f) At the general advertisement of assignments, all assignments shall be considered permanent vacancies. In the event there is no semi-annual change of time table, a date for the general advertisement of assignments will be agreed upon by the General Manager for the Company and the General Chairman for the Union.

Permanent vacancies in assigned service or new assignments created will be bulletined for 7 days on the seniority district and given to the senior qualified Trainman applying therefor. When an assignment is not started within 20 days after the bids close, the assignment must be rebulletined. Permanent vacancies in unassigned service will be given to the senior qualified Trainman applying in writing therefor.

It appears to the Arbitrator that the purpose of article 42, clause (a), paragraph one, is to give to employees a reasonable degree of certainty of their assignments, obviously to assist them in the bidding process. Significantly, however, the paragraph does contemplate that assignments will, on occasion, not be able to start at the bulletined starting time. That is the obvious intention and understanding of the second sentence of the paragraph. The Company has no discretion to start an assignment earlier than the bulletined starting time, but it can, within the limits of what is practicable, occasionally delay the start of a bulletined assignment.

I must agree with the Company that when paragraph one is read from a purposive standpoint, the interpretation advanced by the Council is not sustainable. As the provisions quoted above reveal, the bulletining of an assignment is governed by the terms of article 36 of the collective agreement. More specifically, as contemplated in article 36(f) the bulletining or rebulletining of an assignment is to take place on the basis of a seven day notice. When the provisions of article 36 are read together with the paragraph which is the subject of this dispute, the Arbitrator is compelled to conclude that the interpretation of the Company is correct. Obviously, when a decision is to be made to permanently change the starting time of a bulletined assignment, to a point in time which is beyond three hours from the original starting time, the employer is obliged to re-bulletin the position. I find it impossible, however, to interpret the final sentence of paragraph one so as to require rebulletining on a day by day or case by case basis, in the face of such unforeseen events as harsh weather, a shortage of equipment, or a breakdown or delay in a customer's operations.

The Arbitrator can appreciate the sentiment which motivates the grievance. The Council's representatives argue, in part, that if the Company is at liberty to delay the starting time of a bulletined assignment beyond the three hour limit, and does so at its discretion, the difference between assigned and unassigned service becomes questionable. The Arbitrator's acceptance of the interpretation of the Company does not, however, go so far as to sustain the view that the Company is at liberty to do entirely as it wishes in respect of the delay of the starting of bulletined assignments. Clearly, the language of paragraph one contemplates that there will be certain circumstances, generally unforeseeable, which will occasion a delay in the practicable starting time of an assignment. However, the Company cannot frustrate the intention of the paragraph by generally disregarding the bulletined starting time of an assignment when it would, in fact, be practicable to respect it. If, in a given case, it could be shown that the Company showed such continuing indifference to its obligation as to constitute what could be deemed to be a permanent departure from the bulletined starting time of an assignment, the Council might legitimately invoke the provisions of article 42,

clause (a), paragraph one to compel the rebulletining of the assignment. That is not what is disclosed in the case at hand, however, as it appears that the variations in the starting times which give rise to this grievance, albeit they are in excess of three hours, were in fact occasional and were justified by the existing practicalities.

For all of the foregoing reasons the Arbitrator is compelled to accept the interpretation of the Company. The grievance must therefore be dismissed.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR