

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3138

Heard in Montreal, Thursday, 14 September 2000

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Failure by the Company to establish specific limits for section crews at Winnipeg.

BROTHERHOOD'S STATEMENT OF ISSUE:

By way of notice dated May 29, 2000, served pursuant to Article 8.1 of the Job Security Agreement, the Company abolished certain track maintenance force positions across the country and in certain locations re-established various other positions.

In Winnipeg and surrounding area, the Company abolished 5 crews consisting of a total of 50 employees and re-established 13 crews consisting of a total of 38 employees; 5 crews working out of 198 Archibald St., St. Boniface and 8 crews working out of 320 Sutherland St.

With this reorganization of section forces, the Company decided to eliminate specific section limits and instead intends to have the same section limits for all of the crews.

The Union contends that: **1.)** It is an historic past practice to have specific section limits for each individual section crew. **2.)** The Company is acting unilaterally, arbitrarily and in bad faith and is making this change for no valid business purpose. **3.)** The Company is estopped from establishing section crews without each having its own specific section limits. **4.)** The Company's action in this regard undermines and makes meaningless the following collective agreement provisions and nullifies their intent:

- (i) Sections 8 and 9, the overtime call out provisions;
- (ii) Section 14.4(b), the provision to fill a TMF position for up to 120 days on a particular track Section;
- (iii) Section 26.13, the provision that allows for an increased rate for a TMF required to leave his own section gang;
- (iv) Appendix A;
- (v) Appendix C, Understanding No. 18.

The Union requests that: **1.)** The Company not be allowed to change, unilaterally and arbitrarily the long historic practice of having specific section limits for individual section crews. **2.)** It be declared that the Company is estopped from making this change. **3.)** It be declared that the Company's plan to eliminate section limits would undermine and make meaningless the above noted sections of the agreement and nullifies the intent of the parties with respect thereto. **4.)** All employees who may have suffered any loss of earnings as a result be compensated.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Dragani	– Labour Relations Officer, Calgary
E. J. MacIsaac	– Labour Relations Officer, Calgary
R. M. Andrews	– Manager, Labour Relations, Calgary
R. Tumak	– Service Area Manager
A. Hastman	– Track Maintenance Supervisor, Winnipeg

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. W. Brown	– General Counsel, Ottawa
G. D. Housch	– Vice-President, Ottawa
K. Deptuck	– Vice-President, Ottawa
D. McCracken	– Federation General Chairman, Ottawa
M. Couture	– General Chairman – Eastern Region, London

AWARD OF THE ARBITRATOR

It is common ground that the Company abolished five section crews, comprised of some fifty employees. The Company also eliminated the five sections which were serviced by the crews, reorganizing the territory in question into a single section to be serviced by thirteen crews. The Brotherhood objects to the fusion of the sections, as it results in a manpower structure which it alleges is incompatible with the intention of the parties and the specific provisions of the collective agreement. In the Brotherhood's submission certain provisions of the agreement are in effect rendered inoperative by reason of the Company's action. The Company takes the view that its actions are consistent with its prerogatives and management rights. The parties have agreed to delay the implementation of the proposed change pending this award.

Upon a review of the material filed the Arbitrator has considerable difficulty with the position advanced by the Company. It is, of course, open to the Company to reorganize sections as it deems appropriate, for valid business purposes. It is not, however, the geographic reorganization of the section which gives rise to the instant dispute. Rather, it is deployment of employees in the classifications of Track Maintenance Foreman, Leading Track Maintainer, Truck Driver and Track Maintainer, as well as Track Maintainer which gives rise to the Brotherhood's objections.

The five sections in dispute are Winnipeg Yard, Weston No. 1, Weston No. 2, St. Boniface No. 1 and St. Boniface No. 2. Under the present manpower structure forty-nine employees perform the track maintenance duties required on the five sections. For that purpose they are divided into five section crews, each with one track maintenance foreman, and with varying numbers of leading track maintainers, truck driver and track maintainers, and track maintainers. The rationalization being sought by the Company would amalgamate the five sections into a single section, to be serviced by thirty-eight employees, thereby reducing the complement by eleven positions.

According to the material filed by the Company, the proposed reorganization would result in a single section serviced by thirteen crews, each crew being comprised for the most part of a single track maintenance foreman, a single lead track maintainer, a single truck driver and track maintainer, and, in the case of two crews, one additional track maintainer. Under the Company's proposed arrangement seven of the crews will be attached to the former Winnipeg Yard and Weston No. 1 under Track Maintenance Supervisor A. Hastman, one crew will be assigned under Track Maintenance Supervisor B. Snow and five crews will be assigned under Track Maintenance Supervisor B. Leitch, who will be responsible for the former St. Boniface No. 1 and 2 sections. The essential feature of the proposed system, however, is that each of the crews may be deployed to any part of the larger territory, without the

jurisdictional restrictions of the former section territories. In the Company's submission that arrangement gives it greater flexibility to service its needs through the Greater Winnipeg Yard, Weston and St. Boniface areas, and will also result in enhanced work opportunities for the thirty-eight employees so organized.

The Company concedes that the arrangement so developed does introduce an innovation that would appear to be unprecedented. Under its new structure there would be thirteen track maintenance foremen effectively responsible for the single large section which is established. There would likewise be thirteen lead track maintainers with the same geographical area of responsibility. The Brotherhood submits that that structure is entirely incompatible with, and contrary to, the collective agreement. In support of that submission it draws to the Arbitrator's attention a number of provisions of the collective agreement including, for example, sections 8 and 9, governing overtime call-out and work on rest days, respectively. Section 8.1 reads, in part, as follows:

8.1 ... For overtime work on any particular track section the following order of call will be utilized:

First employee – TMF on that section, if unavailable the ATMF, if unavailable the LTM, if unavailable the TM/TD (if qualified), if unavailable the track maintainer (if qualified). If there is no qualified employee available from the track section affected, a qualified employee from the closest adjoining section to the work location or the suspected trouble are will be called, in the same order as above.

Second Employee – TM/TD on the track section affected.

Additional Employees – will be called, based on track maintainer seniority from that track section. If further additional employees are required they shall be called in the same order as above from the following:

- mobile gangs on the territory, if any
- employees from the closest adjoining section on that seniority territory
- other track employees from the seniority territory.

The Brotherhood further points to the provisions of section 14.4(b), which governs the filling of temporary vacancies. It reads, in part, as follows:

14.4(b) In the application of Clause 14.4(a) above, where a temporary vacancy of track maintenance foreman or assistant track maintenance foreman of up to 120 calendar days is required by the Company to be filled on sections having regular assigned positions of assistant track maintenance foreman and/or leading track maintainer, it shall be filled by employees in the following order of priority and such employees will not be subject to displacement under clause 14.6(a):

T.M.F.

- (i) the senior track maintenance foreman on that section not working as such; if none
- (ii) the assistant track maintenance foreman on that section; if none,
- (iii) the leading track maintainer of that section.

The Brotherhood's representatives submit that the foregoing provisions reflect the fundamental understanding of the parties, consistent with decades of practice within the industry, whereby territories of road have been divided into sections for maintenance purposes, with each section having a single assigned track maintenance foreman and a single leading track maintainer. It argues that there is no provision in the collective agreement which would contemplate, for example, the assignment of overtime as among the thirteen track maintenance foremen established under the single section of Winnipeg. While the Company responds that overtime would in that circumstance be allotted on the basis of seniority as among the thirteen track maintenance foremen, the Brotherhood submits that there is simply no contemplation of such an arrangement under the collective agreement.

The Arbitrator is compelled to agree with the submissions of the Brotherhood. The concept of sections and section crews is longstanding within the industry, and gives form to a substantial number of the rights and obligations which the parties have negotiated over the years into their collective agreement. To put it very simply, the collective agreement, as reflected in the sections reproduced above, implicitly, if not explicitly, recognizes that

each section established for maintenance purposes is to have a single track maintenance foreman and a single leading track maintainer. It would also appear that where the position of assistant track maintenance foreman is utilized there is also to be a single individual of that designation. That is clearly reflected in the language of section 14.4(b), as well as the overtime calling provisions of section 8.1.

The Arbitrator well appreciates the Company's desire to achieve greater efficiencies in the deployment of its track maintenance manpower at Winnipeg. The exercise of its management rights in that regard must, however, be in conformity with such limitations as may flow from the provisions of the collective agreement. For reasons which they best appreciate, based largely on the history of section crews in the industry, the framework of the parties' collective agreement clearly contemplates that section crews are to have a single track maintenance foreman, one leading track maintainer and, where assigned, one assistant track maintenance foreman. The change proposed by the Company would depart from the understanding established in the collective agreement, and would in effect add to the collective agreement provisions which it does not presently contain. Specifically, for example, it would amend the provisions of article 8.1 governing the assignment of overtime by assigning such work to the senior track maintenance foreman, the senior assistant track maintenance foreman and the senior leading track maintainer, a provision which is simply not to be found in the present iteration of the section. For the Company to achieve the end that it seeks it must, in the circumstances disclosed, negotiate with the Brotherhood such exceptions as would be necessary to make the changes which it seeks to achieve. Alternatively, it may, of course, make unilateral changes, so long as those changes are consistent with the terms of the collective agreement. The structure presently proposed is clearly not.

Nor can the Arbitrator give substantial weight to the submission of the Company that the Brotherhood has already accepted a section structure in Winnipeg which involves more than one leading track maintainer on a single section crew, as for example the two employees so designated at Weston No. 1. The fact that the Brotherhood may have accepted that structure cannot be taken as a general waiver of its rights in respect of manpower deployment under the collective agreement generally.

The Arbitrator therefore declares that the proposed structure for crewing a single track maintenance section at Winnipeg is in violation of the collective agreement, and directs that any section reorganization undertaken by the Company be compatible with the implicit, if not explicit, terms of the collective agreement which reflect the agreed structure of section crews.

September 18, 2000

(signed) MICHEL G. PICHER
ARBITRATOR