

A W A R D

IN THE MATTER OF AN ARBITRATION

BETWEEN CANADIAN PACIFIC RAILWAY COMPANY

AND UNITED TRANSPORTATION UNION

AND IN THE MATTER OF A DISPUTE RELATING TO THE INSTITUTION OF RUN-THROUGH SERVICE BETWEEN TORONTO AND SMITHS FALLS.

SOLE ARBITRATOR: J. F. W. Weatherill.

A hearing was held in this matter at Montreal on May 13, 1970, and at Toronto on May 25, 1970.

L. H. Breen and others for the union.

H. Colosimo and others for the company.

A W A R D

The parties to this matter have proceeded in accordance with the following joint statement of issue:

JOINT STATEMENT OF ISSUES:

At the request of the Company, a meeting was held with the General Chairman, Brotherhood of Railroad Trainmen (now U.T.U.) in Toronto, Ontario, on May 14th, 1968, at which time the Company served notice of its desire to implement a run-through operation between Smiths Falls and Toronto.

The provisions of Article 45 were incorporated into the Collective Agreement signed April 29th, 1969, and the parties mutually agreed that the discussions and meetings held between the Company and the Union prior to that time in respect of the proposed run-through constituted notice as required by Article 45, Clause 1(a).

At the conclusion of the negotiations between the Company and the Union agreement was reached on all items contained in the attached proposed Memorandum of Agreement except for those items remaining in dispute which were jointly referred to a Board of Review in accordance with Article 45, Clause 1(d) and enumerated in a Joint Statement of Issue quoted below:

*Parties to Dispute:

UNITED TRANSPORTATION UNION (T)

and

CP RAIL
Eastern Region

Joint Statement of Issue:

At the request of the Company, a meeting was held with the General Chairman, Brotherhood of Railroad Trainmen (now U.T.U.) in Toronto, Ontario, on May 14th, 1968, at which time the Company served notice of its desire to implement a run-through operation between Smiths Falls and Toronto.

After some subsequent preliminary discussion, the General Manager wrote to the General Chairman under date of July 9th, 1968, copy attached, requesting a further meeting to progress the matter.

The provisions of Article 45 were incorporated into the Collective Agreement signed April 29th, 1969, and the parties mutually agreed that the discussions and meetings held between the Company and the Union prior to that time in respect of the proposed run-through constituted notice as required by Article 45, Clause 1(a).

Negotiations have been carried out between the Company and the Union which resulted in agreement being reached on all items detailed in the attached proposed Memorandum of Agreement except:

Item 4

1. (a) Appendix "A" which details the manning of run-through trains by Smiths Falls and Toronto crews provides that with the exception of designated trains which are to be manned by home terminal crews, away-from-home crews will stand out ahead of home terminal crews after eight hours from time released on arrival. The Union is seeking a cycling of a fixed number of home terminal crews from each home terminal, working or deadheading on specific days of the week on the basis of attached Statement No. 1.

(b) Should the Union proposal not be adopted with respect to cycling, the Union has proposed that any other cycling arrangement include a provision that away-from-home crews shall be automatically deadheaded to the home terminal on expiration of 16 hours from the time released from duty on arrival at the away-from-home terminal. While waiting for deadheading to commence, the crew shall be paid in accordance with Article 15 of the Collective Agreement.

Item 5 - Hours on Duty.

2. The proposed agreement provides that the hours on duty of trainmen in run-through service will not regularly exceed ten hours. The Union is

seeking a provision to extend to the crews the right to take rest enroute after the expiration of ten hours and when rest is not taken, all time on duty in excess of ten hours to be paid for at the rate of time and one-half, in addition to the miles run.

Item 7 - Switching Enroute.

3. The proposed agreement provides for payment of switching enroute at 12½ miles per hour on a minute basis for all time so occupied in excess of 59 minutes. The Union is seeking payment for switching enroute for all time when time so occupied exceeds 59 minutes.

Item 9 - Deadheading.

4. The proposed agreement provides that when required by the Company to deadhead by C.N. passenger train or other means of travel it will be paid for on a time basis in accordance with Article 22 of the Collective Agreement for all employees, regardless of their seniority date. The Union is seeking payment for such deadheading at 200 miles for employees on the Toronto (District No. 1) and Smiths Falls seniority lists on the signatory date of the Agreement.

Guarantee.

5. The Union is seeking a provision in the agreement for a guarantee of 3,800 miles per month at the through-freight rate for all trainmen on the seniority lists of trainmen at Smiths Falls and Toronto on the date prior to the signatory date of the agreement, whether laid off or working, now or in the future and irrespective of whether reduction in crews are brought about as a result of the implementation of the run-through between Smiths Falls and Toronto or other reasons such as traffic declines.

Regulations of Pools.

The Union is seeking a provision in the agreement that pool crews in run-through service be regulated between 3,800 and 4,300 miles per month.

(Sgd.) Leo H. Breen
General Chairman,
U.T.U. (T)

(Sgd.) J. D. Bromley
Regional Manager
CP Rail, Eastern Region.

Montreal, April 2nd, 1970."

The Board of Review composed of Messrs. G. McDevitt and G. Gale, Vice-Presidents, U.T.U., for the Union and Messrs. J. C. Anderson, Vice-President, Industrial Relations, and E.C.B. Macnabb, Assistant to Vice-President, CP Rail, for the Company, met in Montreal, April 21st and 22nd. The Board was unable to resolve the issues remaining in dispute. However, it has been agreed by the Company and the Union subject to confirmation by the Arbitrator, that in respect of Item 6, the number of pool crews assigned to the run-through operation will be regulated so as to provide mileage between 3,500 and 4,300 miles per month.

The issues remaining in dispute referred to and unresolved by the Board of Review are hereby referred to the Arbitrator for final and binding determination in accordance with Article 45, Clause 1(e)

"Leo H. Breen"
General Chairman,
United Transportation Union
(T).

"J. D. Bromley"
Regional Manager,
Operation & Maintenance,
Eastern Region, CP Rail.

Montreal, April 29th, 1970.

It is agreed that the proposed run-through operation will constitute a material change in working conditions. There is no doubt that article 47 of the collective agreement applies, and there is no dispute under article 47(1)(m) as to the applicability of the article. The parties were required

to negotiate, and have negotiated pursuant to article 47(1)(b) with a view to agreement on measures to minimize the adverse effects of the change on the employees affected thereby. Agreement has been reached with respect to some measures, but not with respect to those referred to in the joint statement of issue. As therein noted, the matter was submitted to a Board of Review, pursuant to article 47(1)(e). Not having been resolved by the Board of Review, the matter has been submitted to arbitration pursuant to the further provisions of article 47(1)(e).

The arbitration before me, held pursuant to article 47(1)(e), is not a matter to be taken for arbitration to the Canadian Railway Office of Arbitration, but is rather an ad hoc matter brought under the special provisions of that article, although the person from time to time occupying the position of Arbitrator for the Canadian Railway Office of Arbitration is persona designata to hear such cases. It is in the latter capacity that I am seized of this case.

It is clear from the provisions of article 47 that the arbitration of the issues here in dispute (as distinguished from the arbitration of the question whether article 47 applies) is a special procedure involving substantive issues and procedural provisions quite distinct from those which apply in matters which may come before the Canadian Railway Office of Arbitration. This is the effect of article 47(1) subsections (e), (g), (h), (i) and 'm).

My jurisdiction as arbitrator in this matter is clearly delimited in article 47(1)(g), as follows:

- (g) The decision of the Arbitrator shall be confined to the issue or issues placed before him which shall be limited to measures for minimizing the adverse effects of the material change upon employees who are affected thereby, and to the relaxation in schedule rules considered necessary for the implementation of the material change, and shall be final and binding upon the parties concerned.

On May 14, 1968, the company gave notice to the union of its desire to implement a run-through operation for pool freight crews between Toronto and Smiths Falls. At present, crews operate between Toronto and Trenton, and between Smiths Falls and Trenton. Trenton has been an away-from-home terminal for crews from Toronto and from Smiths Falls. The effect of the change will be to eliminate Trenton as a terminal for these crews. It has been agreed, however, that both Toronto and Smiths Falls will be retained as home terminal. Smiths Falls will be the away-from-home terminal for Toronto crews and Toronto the away-from-home terminal for Smiths Falls crews.

The first of the items in dispute relates to the manning of run-through trains. As the joint statement of issue shows, there are two union proposals in this respect, to which the company has not agreed. The first of these is that there be a cycling of a fixed number of home terminal crews from each home terminal, working or deadheading on specific days of the week according to an established schedule.

The second proposal is that any other cycling arrangement than that mentioned should include a provision that away-from-home crews shall be automatically deadheaded to ~~the home~~ terminal on expiration of 16 hours from the time released from duty at the away-from-home terminal.

Some method of cycling the crews from the two home terminals is necessary in order to provide a fair and equitable division of work between the Toronto and Smiths Falls employees, and to minimize any adverse effect of the new operation in this regard. Generally speaking crews operate from their home terminals on a first-in, first-out basis. In this case, however, where a crew arrives at an away-from home terminal, and is ready to take a return trip, it may be in competition with a crew for whom it is a home terminal. It is the company's proposal that while crews would operate out of both terminals on a first-in first-out basis, a crew at an away-from-home terminal would stand first out after eight hours' rest. A problem could arise in some cases as the result of the displacement of crews at their home terminal by crews from the other terminal who had had eight hours' rest. To prevent such displacement to an undue degree, three trains would be designated to be manned by home terminal crews. There would be an equal division of crews dispatched each week, subject to a variation of two dispatches per week. To permit this division of work, adjustments would be made by varying the crews to be called for extra trains, or by the deadheading of crews in some cases. While it is possible that cases of

difficulty would arise under this arrangement, it is an even-handed method of distributing the available work among the groups of employees concerned, and has the effect of minimizing the effect of the change on these employees. The union proposal, while also fair as between the groups of employees concerned, requires the use of a set number of crews regardless of actual requirements. This is really a request for a form of guarantee, which in my view goes beyond the measures contemplated by article 45. Accordingly, the submission of the company as to the method of cycling is to be preferred. The union's alternative proposal, that crews held at the away-from-home terminal for 16 hours be deadheaded home, would provide for such crews a benefit greater than that provided for others under the collective agreement, and greater indeed than what they have at present. In any event, the adverse effect of being held at an away-from-home terminal for a longer period, perhaps, than they have been accustomed to, is remedied to some extent by their qualified right to stand first out after eight hours rest. In addition to this, of course, they are entitled to payment under article 15, where held away from home terminal. On the first issue in dispute, therefore, it is my award that the provisions proposed by the company be incorporated in the agreement.

The second item in dispute relates to hours on duty. The employees concerned have at all material times been subject to the provisions of the collective agreement which apply generally to employees in the bargaining unit. Their particular

work, however, will be altered considerably by the change in operations, in that substantially longer runs will be involved. The parties' proposed agreement provides that the hours on duty of trainmen in run-through service will not regularly exceed 10 hours. The union seeks further provisions under which trainmen would be entitled to take rest enroute after the expiration of 10 hours, and, where rest is not taken, would be entitled to payment for time on duty in excess of 10 hours at time and one-half, in addition to miles run. The express reason for this request is to establish a penalty clause as a means of ensuring that the trainmen's hours of duty do not regularly exceed 10. This undertaking is one which does not benefit other employees in the bargaining unit. Other employees are entitled to book rest when they have been on duty 12 hours or more, pursuant to article 26(a). That is a rule to be invoked where rest is in fact necessary, and there appears to be no substantial reason why the employees affected by the change in operations here should be entitled to book rest under other conditions. As the company quite properly points out, that would not be a measure to minimize adverse effects upon employees, but would simply be an improvement upon a general rule for the special benefit of a particular group of employees. Similarly, provisions for payment of overtime rates are of general application, and the employees affected in this case are entitled to the benefit of those provisions on the same basis as any other employees. Here too

it is my view that the union's proposal is not properly a measure to minimize the adverse effects of the proposed change, but is rather an attempt to secure for these employees special benefits not available to others. On the second issue in dispute, therefore, it is my award that the provisions proposed by the company be incorporated into the agreement.

The third item in dispute relates to switching enroute. The proposed agreement provides for payment for switching enroute at twelve and one-half miles per hour on a minute basis for all time so occupied in excess of 59 minutes. The union seeks payment for switching enroute for all time, when the time so occupied exceeds 59 minutes. This would not alter the circumstances in which overtime is payable, but would alter the amount payable. It may be noted that the proposed agreement restricts the company to a combination of seven switches and stops, with the maximum number of stops to be three. Trainmen generally may be required to perform switching enroute, and receive no additional pay therefor except when the amount of switching or other work is such as to extend the hours on duty so that the trip as a whole is paid on a time basis. The limitation on switching, and the provision for overtime payment where switching occupies more than 59 minutes, are special concessions to the employees affected by the proposed change, and which are not available to others, nor to these employees at the present time. The increased payment sought by the union is simply an increase of

benefit to this group of employees, and a further penalty to the company. There is no special justification for the additional payment, nor any rationale by which it would be limited. The imposition of penalties upon the company is a very different matter from the determination of measures to minimize adverse effects on employees. It is the latter which is involved here, and there is nothing before me which would suggest that such minimization will not be accomplished by the proposed agreement. On the third issue in dispute, therefore, it is my award that the provisions proposed by the company be incorporated into the agreement.

The fourth item in dispute relates to deadheading. Crews now deadheaded between Toronto and Trenton, or Smiths Falls and Trenton are entitled to not less than eight hours' pay, pursuant to article 22 of the collective agreement. In the event of deadheading between Toronto and Smith Falls, crews would (where the trip did not exceed eight hours) receive the same amount of pay, although the amount of time spent would have substantially increased. In effect, two relatively short deadhead trips, for each of which eight hours was paid, have become one, for which, under the agreement, the same eight hours would be paid. In the proposed agreement the company undertakes to pay two minimum days for deadheading on freight trains between Toronto and Smiths Falls to those employees who are affected by the change. These provisions would benefit present employees only, and would apply only in cases of deadheading on freight trains. It would seem clear

that new employees are not persons adversely affected by the change in operations, and there is no reason why they should be paid for deadheading on any other basis than that set out in article 22. The limitation of the payment provided for in the proposed agreement to crews deadheading on freight trains, however, seems to me to be contrary to the rationale on which the double payment for deadheading over the run-through route has been agreed to. The method of travel used ought not to affect the mileage - or minimum day - involved, however pleasant or fast one or another method of travel might be. On the fourth issue in dispute, therefore, it is my award that the agreement provide that the minimum to be paid for deadheading between Toronto and Smiths Falls shall be 200 miles at through freight rates, and that this minimum is applicable only in cases of trainmen on Toronto and Smiths Falls seniority lists on the signatory date of the agreement.

The fifth item in dispute is a request by the union for a guarantee as set out in the joint statement of issue. It is clear from the terms of this request that it is something more than a measure to minimize adverse effects of the change in operations, since it would provide a benefit the employees affected would not have enjoyed in any event. Apart from this, however, it does not appear to be contemplated that a special form of guarantee should be developed for employees affected by a material change in working conditions. This is the sort of matter in which any benefits generally available under

the collective agreement are to be enjoyed by those affected by the change in the same manner as any other employees.

It is to be noted that article 16 of the collective agreement does contain a guarantee for trainmen regularly set up in freight service. Article 45(1)(c) provides as follows:

(c) While not necessarily limited thereto, the measures to minimize adverse effects considered negotiable under paragraph (b) above may include the following:

- (1) Appropriate timing.
- (2) Appropriate phasing.
- (3) Hours on duty.
- (4) Equalization of miles.
- (5) Work distribution.
- (6) Adequate accommodation.
- (7) Bulletining.
- (8) Seniority arrangements.
- (9) Learning the road.
- (10) Eating enroute.
- (11) Work enroute.
- (12) Lay-off benefits.
- (13) Severance pay.
- (14) Maintenance of basic rates.
- (15) Constructive miles.
- (16) Deadheading.

The foregoing list is not intended to imply that any particular item will necessarily form part of any agreement negotiated in respect of a material change in working conditions.

That list is of course not exhaustive of the matters which may be included in the agreement to be reached pursuant to article 45. It is, however, significant that a matter as important as a guarantee should not be referred to. Benefits for employees who may be laid off, or out of jobs as a result of a change in operations are, however, capable of being provided under items (12) and (13) of article 45(1)(c). Such provisions have in fact been made in the proposed agreement


between the parties in this case. The parties have also provided for the regulation of pools so as to ensure a certain level of earnings for trainmen. A guarantee of the sort sought by the union under this item is inconsistent with these other provisions, besides being, as I have indicated, beyond the scope of measures contemplated by article 45. On the fifth issue in dispute, therefore, it is my award that the union's proposal not be incorporated in the agreement.

The sixth issue in dispute relates to the regulation of pools. Article 16 of the collective agreement, which provides for a guarantee of 2,800 miles per month for trainmen in freight service, provides as well for limitation of monthly mileage for trainmen in freight service to 4,300 miles. The parties, in negotiations pursuant to article 45, have agreed to provide for the regulation of pools between 3,500 and 4,300 miles per month. This agreement, as noted in the foregoing paragraph of this award, would have been inconsistent with the provision of the guarantee of 3,800 miles sought by the union, and the matter was accordingly left subject to confirmation by the arbitrator. As has been indicated, the guarantee provision sought by the union has not been allowed; accordingly, the parties' agreement as to the regulation of pools between 3,500 and 4,300 miles per month is confirmed.

It is accordingly my award that the agreement to be made by the parties pursuant to article 45 of the collective

agreement is to reflect the foregoing determinations. In the event the parties are unable to agree to particular provisions relating to the items in dispute before me, I retain jurisdiction to deal with those matters for the purpose of completing or clarifying this award.

DATED AT TORONTO, THIS 2nd DAY OF JULY, 1970.


Arbitrator.