CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 101

Heard at Montreal, Tuesday, February 13th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (SD & PC DEPT.)

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the interpretation and application of Article 9, Clauses (a) and (b), Article 3, Clause (a) and Article 20, Clauses (a) and (b), of the current Collective Agreement.

JOINT STATEMENT OF ISSUE:

The Company posted for bid by operational schedule and put into operation on October 29th, 1967, an assignment for crews operating on Trains 153 and 154, Quebec City to Montreal and return. The said operating schedule showed the starting point of this assignment as Quebec City. This operation was superseded by a new schedule posted November 15th and effective December 1st, 1967, which contemplates essentially the same operation.

The Brotherhood contends that by setting up the designated terminal as Quebec City, the Company is in violation of Article 9, Clauses (a) and (b), Article 3, Clause (a), and Article 20, Clauses (a) and (b).

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. R. BROWNE **GENERAL CHAIRMAN**	**(SGD.) THOS. P. JAMES** **MANAGER, SLEEPING, DINING, PARLOUR CAR AND NEWS SERVICES**

There appeared on behalf of the Company:

J. W. Moffatt – General Superintendent, S.D., P.C. Dept., Montreal

And on behalf of the Brotherhood:

J. R. Browne – General Chairman, Montreal

AWARD OF THE ARBITRATOR

In this matter the Brotherhood challenged the right of the Company to post an operating schedule showing two separate starting points, Montreal and Quebec City, in a pool operation. The manning of trains 152 – 155 – 154 and 153 between Montreal and Quebec City is covered by Montreal crews in a pool service.

Effective October 29, 1967, a schedule was put into operation requiring crews reporting for duty at Montreal Train No. 152 and returning Montreal from Quebec City the same day on Train No. 155. This turnaround assignment, Montreal to Quebec City and return, was continued for ten days after which crews were to have five days layover.

The second half of the pool assignment shows Quebec City as the starting point on this part of the assignment.

It was contended, therefore, that the crews whose layover was shown as five days, on the fifth day of the layover had to deadhead, off pay, to Quebec City in order to start the second half of the pooled assignment the following day back to Montreal and return to Quebec. The crews remained in this turnaround assignment between Quebec and Montreal and Quebec, ending up in Quebec on the tenth day. Again the crews went on five days layover, but this time on the first day of the layover they had to deadhead back to Montreal, off pay, in order to have the layover at the home terminal. Then, following the layover, the pool cycle started over again.

It was claimed that the starting point of these assignments has been Montreal for many years.

An example of the result of this arrangement as given showed that crews arriving from Quebec on train 153 at 5:00 p.m. are immediately required to report on train 154 for the return trip to Quebec without release in Montreal. However, Article 5, Clause (b) requires not less than 8 hours rest after completion of a round trip of 24 hours or more. The assignment Montreal to Quebec and return is 24 hours.

It was claimed because there is no rest provided in Montreal, the Company set up the starting point of this part of the assignment as Quebec where the crews lay overnight for a period of 14 hours and 30 minutes. In this way they are circumventing the provisions of Article 5.

The representative pointed to Article 9, under the heading “Promotion Districts”, in which Montreal is listed, and which provides, in part:

> Promotion districts and home terminals as at present established will not be changed, and existing services will continue to be manned from their respective districts …

In support of this contention, the representative for the Brotherhood pointed to Article 20, reading, in part:

> Effective May 1, 1967, it is agreed between the parties that on the introduction by the Company of technological, operational and/or organizational changes the following provisions will apply:
>
> **(A)** The Company will not put into effect any such change which is likely to be of a permanent nature and which may effect a material change in working conditions with adverse effects on employees covered by this agreement without giving as much advance notice as possible of any such proposed change to the unions concerned and, in any event, not less than 90 days if a relocation of employee’s is involved and 60 days’ notice in other cases, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the number of employees who would be adversely affected;
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> **(B)** that it will negotiate with the Unions measures to minimize the adverse effects of the proposed change on employees, which measures may, for example, be with respect to severance, loss of wages, expenses of moving and travelling of employees required to relocate, retraining and the merging of seniority lists within organizations and/or such other measures as may be appropriate in the circumstances.
>
> **2.** If the negotiations do not result in mutual agreement within thirty calendar days of the commencement of such negotiations, or such other period as may be agreed upon between the parties, the matter shall be referred immediately for mediation to a Board of Review, on which each of the parties will be equally represented by senior officers.

The Company’s representative stated that upon receipt of the original claim by the Brotherhood that it was in violation of Article 5(b), concerning rest periods, on October 20th they posted an amended Schedule showing the

crews assigned to trains 153–154 entering their assignment at Quebec and making ten consecutive round trips on trains 153–154 on a turnaround basis, thence 5 days layover.

It was then realized that this was creating an unnecessary hardship on the employees by requiring them to enter their assignment at Quebec rather than Montreal. Similarly, when due for relief they had to deadhead from Quebec to Montreal at their own expense in accordance with Article 6 of the Agreement.

Finally, on November 15th, a new schedule was posted providing "Crew will commence Tour of Duty on Train 154 first day; then will make eight consecutive round trips on Trains 153–154 on a turnaround basis between Quebec–Montreal–Quebec and will complete Tour of Duty on arrival Montreal Train 153 the tenth day."

Pointing to the provision in Article 6, "deadheading", the Company's representative reasoned that there was no substance to the claim that it was confined to Montreal as the home terminal; that the deadheading of assigned employees to the home terminal for regular relief and returning to their assigned run after such relief, without pay, contemplates the establishment of runs on which the initial designated terminal is other than at Montreal or any one of the other three terminals mentioned in Article 9.

The final paragraph of subsection (b) of Article 9 was referred to, reading:

> This will not prevent the Company from re-arranging its services or reducing staffs, as may be justified by traffic conditions.

With reference to the alleged violation of Article 20, it was claimed for the Company that this had no application because of section 5 thereof, reading:

> These provisions do not cover cases where
>
> **(a)** workers are affected by a recognizable general decline in business activity, such as a recession or by fluctuations in traffic;
>
> **(b)** the workers affected are casual workers subject to irregular employment because of the nature of the work they perform or seasonal employees outside their normal period of employment;
>
> **(c)** there is a normal reassignment arising out of the nature of the work in which the employees are engaged.

Because of these provisions no attempt was made to give notice to the Brotherhood as required in Section 1 (a) or to negotiate to "minimize the adverse effects of the proposed change on employees."

In this matter I am satisfied that an operational change such as contemplated by Article 20(1) did occur in consequence of what was done, and that this required compliance with what is provided by way of notice and negotiation, unless the Company could establish this became unnecessary under what is contained in 5(a);

> workers are affected by a recognizable general decline in business activity, such as a recession or by fluctuations in traffic.

Beyond the bare statement by the representative for the Company that this was the fact, no figures were produced to the Arbitrator upon which he could base a finding that this claim was justified. Lacking such proof, I find there is nothing before me to justify a finding that the Company acted properly in ignoring Article 20 1(a), (b) and 2 in the circumstances described.

For these reasons this grievance must succeed.

(signed) J. A. HANRAHAN
ARBITRATOR