# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2364

Heard at Montreal, Tuesday, 11 May 1993

concerning

## CANADIAN PACIFIC LIMITED

and

## BROTHERHOOD OF LOCOMOTIVE ENGINEERS

### DISPUTE:

The operation of trains directly between North Bend and Vancouver.

### JOINT STATEMENT OF ISSUE:

On or about May 1, 1991, CP Rail began operating certain trains between North Bend and Vancouver, rather than terminating them at Coquitlam Yard.

The Brotherhood filed a grievance alleging a violation of article 30(a) (1) and (2), which the Brotherhood contends required the Company to provide notice of a material change to the General Chairman and to negotiate benefits to minimize possible significantly adverse effects on locomotive engineers home terminalled at Coquitlam, B.C.

The Company's position in this matter is that no such notice is required.

The Company denied the Brotherhood's request.

| FOR THE BROTHERHOOD | FOR THE COMPANY: |
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| (SGD.) T. G. HUCKER | (SGD.) M. E. KEIRAN |
| GENERAL CHAIRMAN | for: GENERAL MANGER OPERATIONS & MAINTENANCE, HHS |

There appeared on behalf of the Company:

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| R. E. Wilson | – Labour Relations Officer, Vancouver |
| B. P. Scott | – Labour Relations Officer, Montreal |
| J. S. Babson | – Deputy Superintendent, Vancouver |
| G. Chehowy | – Labour Relations Officer, Montreal |

And on behalf of the Brotherhood:

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| R. W. Longworth | – Local Chairman, Coquitlam |
| T. G. Hucker | – General Chairman, Calgary |
| G. Hallé | – Vice-President, Ottawa |

## AWARD OF THE ARBITRATOR

The facts material to this grievance are not in dispute. The Company operates a yard at Coquitlam, which was opened in 1913. It also operates a yard some seventeen miles west, at Vancouver. Until May of 1991 freight trains destined for locations west of Coquitlam were generally switched out by yard crews, with new trains being built and forwarded west using unassigned freight crews. In early 1991 the company introduced direct delivery trains (DDT) designed to service customers dock to dock. This results in smaller trains which can haul freight more efficiently. To reduce the delivery time of DDT trains it was decided to by-pass the normal yard handling. Consequently, DDT trains moving westward from North Bend to Vancouver proceed through Coquitlam, without any switching, and without any crew change. In the result, road crews are called upon to deliver a DDT train at an exact location within the terminal. For example, a train carrying grain can proceed directly to the berth of a waiting ship, eliminating the delay of yard handling. Where train crews on the Cascade Subdivision previously operated trains to and from the Coquitlam Yard, with the change implemented in May of 1991 trains proceed directly through Coquitlam to their destination within the Vancouver Terminal, or conversely, proceed from pick-up points in the Vancouver Terminal directly eastward to points beyond Coquitlam.

It is not disputed that the Company's action has resulted in some change to the working conditions of locomotive engineers operating DDT trains. Because of the additional terminal time which they are required to work, their extra on-duty hours range from one hour and fifteen minutes to two hours and thirty minutes. It is common ground, however, that no assignments have been abolished and that no employees have suffered a loss of work, or a reduction in work opportunities. On the contrary, it appears to be common ground that eight additional locomotive engineer positions have been created by the change.

The Brotherhood alleges that the facts disclose a run-through, or material changes in working conditions, which fall within the scope of article 30 of the collective agreement. It provides, in part, as follows:

> **30(a)** Prior to the introduction of run-throughs or relocation of main home terminals, or of material changes in working conditions which are to be initiated solely by the Company and would have significantly adverse effects on engineers, the Company will:
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> **(1)** give to the General Chairman as much advance notice as possible of any such proposed change with a full description thereof along with appropriate details as to the consequent changes in working conditions, but in any event not less than:
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> > **(i)** three months in respect of any material change in working conditions other than those specified in subsection (ii) hereof;
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> > **(ii)** six months in respect of introduction of run-throughs through a home terminal or relocation of a main home terminal.
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> **(2)** Negotiate with the Brotherhood measures other than the benefits covered by Clause (k) of this article to minimize significantly adverse effects of the proposed change on locomotive engineers, which measure may, for example, be with respect to retraining and/or such other measures as may be appropriate in the circumstances.

The first point of dispute between the parties is whether what has been introduced by the Company is a run-through of Coquitlam. The Brotherhood submits that since 1913 Coquitlam has constituted a terminal which is separate from the terminal of Vancouver, and that the establishment of the DDT trains constitutes a run-through of that terminal. The Company disputes that characterization. It submits that the greater Vancouver area, including the Vancouver Yard and the Coquitlam Yard, as well as all points in between, constitutes a single terminal. On that basis, it maintains that there has been no run-through established.

The second issue raised is whether there are significantly adverse effects on locomotive engineers, so as to bring article 30 into operation. The Brotherhood alleges that there are. Its representative argues that if the DDT trains were required to stop and change crews at Coquitlam, in keeping with the practice which existed previously, there would be substantially more work, which would result in an increase in the complement of locomotive engineers at that location. It submits that the loss of that opportunity is an adverse effect within the contemplation of article 30(a) of the collective agreement. Secondly, the Brotherhood maintains that the longer on-duty hours which locomotive engineers are now required to work has had an impact on their mandatory off duty time. Simply put, the longer hours

that they are now required to work may result in their being required to remain off-duty for longer rest periods, in conformity with federal regulations governing mandatory off-duty time.

The Company denies that there has been any adverse effect on locomotive engineers in the sense contemplated by article 30(a) of the collective agreement. Its representative stresses that there has been no loss of work to any locomotive engineer. In that regard, he emphasizes the similarity of the instant case to the circumstances found in **Ad Hoc 319** between the Canadian National Railway Company and the Brotherhood in respect of job abolishments related to the Vancouver Intermodal Terminal. In that case it was found that, because of attrition, the introduction of the Vancouver Intermodal Terminal did not cause any adverse consequence to the locomotive engineers affected.

The Arbitrator deems it unnecessary to resolve the dispute between the parties as to whether Coquitlam can be characterized as a terminal for the purposes of the collective agreement. It is undisputed that the relationship between the Coquitlam Yard and the Vancouver Yard has been such that for certain purposes the Company appears to have treated Coquitlam as though it were a separate terminal. This is evidenced, to some degree, by the claims, including deadheading claims, paid by the Company in the past for employees assigned between the two locations of Vancouver and Coquitlam, as well as by the fact that road crews, rather than yard crews, have been assigned to operate between the Coquitlam Yard and Vancouver Yard. On the whole, however, it appears to the Arbitrator that the treatment of the Coquitlam-Vancouver locations has a particular historic evolution which may, in one sense, support the Company's explanations for its past treatment of employees working between those locations and, on the other hand, explain the perception of the Brotherhood that Coquitlam has been treated as a terminal. In **CROA 573**, which involved the Company and the United Transportation Union, this Office found that for the purposes of the collective agreement there under consideration, and a deadhead claim filed by a conductor, Vancouver and Coquitlam were to be treated as separate yards within a single terminal. To some extent, that decision explains the use of road crews between the two locations. In reviewing the facts of that case, Arbitrator Weatherill commented as follows:

> Revisions were made to the collective agreement in 1918 to provide that work between Vancouver and Coquitlam would be handled by road train crews and assigned switchers and transfers. This protected trainmen who had previously operated from Coquitlam to North Bend from losing mileage between Vancouver and Coquitlam when facilities were expanded. It does not involve the implication that Vancouver and Coquitlam were separate terminals. Being a special provision for the purpose noted, it supports the Company's rather than the Union's contention in this case.
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> Yard assignments at Vancouver and Coquitlam have historically been treated as being within one yard. Indeed, this appears from the Yard Rules, article 9(m) of which provides as follows:
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> > **(m)** For the purposes of this article, where more than one yard exists within a terminal all yards covered by the same seniority list within such terminal shall be deemed to be one yard except that Vancouver and Coquitlam shall be regarded as two separate yards.

In my view the above passage arguably leaves the Brotherhood's position in some doubt. While it may, of course, be true that the parties to the instant collective agreement had a different intention with respect to the definition of terminals for the purposes of their own relationship, it would require more clear evidence than is before me in the instant case to conclude that they did. On the whole, however, I deem it unnecessary to resolve the issue of whether Coquitlam is a separate terminal for the purposes of this award, given the disposition which must be made of the second issue.

Even if it is assumed, without necessarily finding, that Coquitlam is a terminal, and that what was instituted by the Company constitutes a run-through, or otherwise amounts to a material change in working conditions, the Arbitrator has substantial difficulty concluding that the circumstances fall within the purview of article 30(a) of the collective agreement. That provision requires that any material change "... would have significantly adverse effects on engineers ...". In the case at hand it is common ground that no locomotive engineer has lost any work opportunity as a result of the Company's actions. On the contrary, the working time of the locomotive engineers has increased, and the complement of engineers has also been augmented as a result of the Company's actions. For the reasons touched upon in **AH 319**, involving the Vancouver Intermodal Terminal, the Arbitrator cannot accept that the mere fact that a continuation of the old method of crewing trains through Coquitlam would have created still more jobs amounts to proof of an "adverse effect" on engineers as contemplated in article 30(a) of the collective agreement. That provision is, I think, drafted in contemplation of minimizing real consequences on individual employees whose

lives are negatively impacted in a meaningful way, as regards their earnings, their work opportunities, the possibility of demotion, lay-off and the like. The case at hand does not disclose any adverse results of that kind.

Nor can the Arbitrator sustain the suggestion that occasional impacts in respect of the mandatory off-duty time of employees would constitute "adverse effects" for the purposes of article 30(a) of the collective agreement. Article 30(g) of the agreement provides as follows:

> **30(g)** The effects of changes proposed by the Company which can be subject to negotiation and arbitration under this article do not include the consequences of changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, traditional reassignment of work **or other normal changes inherent in the nature of the work in which engineers are engaged.**
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> [emphasis added]

It is not disputed that the requirement to respect regulations governing mandatory off-duty time is a normal incident of the work of employees in the running trades. The length of a given assignment, and its impact on an employee's subsequent rest period is, in the Arbitrator's view, clearly a matter which is inherent in the nature of the work in which engineers are engaged. As a result, if it can be said that the mandatory off-duty time of locomotive engineers is in some manner affected by the changes introduced in May of 1991 because of longer assignments, that can fairly be characterized as a normal change inherent in the nature of the work. It is not, in my view, a material change in working conditions of the kind contemplated in article 30(a) of the collective agreement.

In summary, without necessarily resolving the issue as to whether Coquitlam may be treated as a separate terminal for the purposes of the collective agreement, because the Brotherhood has failed to establish any significantly adverse effects on locomotive engineers, the Arbitrator cannot sustain its position that article 30(a) of the collective agreement applies, or that the Company was under any obligation to give notice in conformity with its terms. For all of these reasons the grievance must be dismissed.

May 14, 1993

**(signed) MICHEL G. PICHER**
**ARBITRATOR**