

SOURCE	Camp		
EFF.	87	01	01
TERM.	88	12	31
No. OF EMPLOYEES	9600		
NOMBRE D'EMPLOYES	9600		

MASTER AGREEMENT

Dated July 29th, 1988

Ottawa, Ontario

Between

Canadian National Railway Company
 Canadian Pacific Limited
 Dominion Atlantic Railway Company
 Quebec Central Railway
Esquimalt and Nanaimo Railway
 Grand River Railway Company
 Lake Erie and Northern Railway Company
Shawinigan Terminal Railway
 Toronto Terminals Railway Company

And

Their Non-Operating and Shopcraft Employees

Represented by

Associated Railway Unions

Signatory hereto

Application of Wage Increases, Starting Rates, Benefit Plans, Contracting Out, Consolidation of Seniority Units, Incidental Work Rule, and other changes, consequent upon the Awards of the Arbitrator, Mr. Dalton L. Larson dated February 3, 1988 and April 11, 1988 covering the years 1987 and 1988, pursuant to the Federal Government's Maintenance of Railways Operations Act, 1987.

JAN 13 1989

02947(02)

PREAMBLE

Pursuant to the Awards of the Arbitrator, Mr. Dalton L. Larson, dated February 3, 1988 and April 11, 1988 it is hereby agreed that existing collective agreements between the Railways and the Organizations signatory hereto, as specified in Appendix 'A' to this Agreement, are amended to conform to the following provisions of this Agreement with the exception of Article III hereof and except that these provisions shall not apply to positions which are located on Canadian National lines in the United States and which come within the scope of the aforementioned collective agreements.

ARTICLE I - WAGES

A. General Wage Increases:

1. Effective January 1, 1987, all basic hourly, daily, weekly, and monthly rates of pay in effect on December 31, 1986 will be increased by 3%;
2. Effective January 1, 1988, all basic hourly, daily, weekly, and monthly rates of pay in effect on December 31, 1987 will be increased by 3%;
3. Effective July 1, 1988, all basic hourly, daily, weekly, and monthly rates of pay in effect on December 31, 1987 will be increased by 0.5%.

B. Starting Rates:

1. Employees entering the service prior to March 1, 1988 are subject to the existing rates of pay and the rules and practices related thereto.

2. Except as provided in Note 1 below, employees entering the service on or after March 1, 1988 will be compensated as follows:

1st 7 months of cumulative compensated service (CCS)

- 85% of job rate

2nd 7 months of CCS - 90% of job rate

3rd 7 months of CCS - 95% of job rate

Thereafter - 100% of job rate

NOTE 1: This provision will not apply to apprentices or shop craft trainees.

Representatives of the CERT & GW and TCU will confirm in writing to CN that the reference to this provision not applying to apprentices does not apply to Article 23 of Agreement 5.1 nor to Article 20 of Agreement 6.1.

NOTE 2: This provision will replace all existing step rate provisions.

3. An employee subject to paragraph 2 above, except when moving to a position that had step rate provisions prior to March 1, 1988, will, when entering a different position in the same bargaining unit, be compensated at the same percentage of the job rate of the position being entered as he was receiving in the position being vacated. Service in the position vacated will be counted as service in the position entered for purposes of application of paragraph 2.

4. An employee subject to paragraph 2 above entering a position that had step rates prior to March 1, 1988, will be compensated in accordance with the step rate provisions of paragraph 2 above.
5. The positions having step rates prior to March 1, 1988 will be identified by the parties to the individual collective agreements.
6. The applicable rates of pay for employees entering the service on or after March 1, 1988 will be included in each collective agreement.

C. Shift Differentials

Amend Shift Differential provision to read:

"Effective January 1, 1988, employees whose regularly assigned shifts commence between 1400 and 2159 hours shall receive a shift differential of 35 cents per hour, and effective March 1, 1988 employees whose regularly assigned shifts commence between 2200 and 0559 hours shall receive a shift differential of 40 cents per hour. Overtime shall not be calculated on the shift differential nor shall the shift differential be paid for paid absence from duty such as vacations, general holidays, etc."

ARTICLE II - ANNUAL VACATIONS

The annual -vacation provisions contained in Article III of the Master Agreement dated December 11, 1974 are amended as follows:

(3-Week Provision)

"(b) Effective January 1, 1988, subject to the provisions of Note (1) below, an employee who, at the beginning of the calendar year, has maintained a continuous employment relationship for at least three years and has completed at least 750 days of cumulative compensated service, shall have his vacation scheduled on the basis of one working day's vacation with pay for each 16-2/3 days of cumulative compensated service, or major portion thereof, during the preceding calendar year, with a maximum of 15 working days: in subsequent years, he will continue vacation entitlement on the foregoing basis until qualifying for additional vacation under Clause (c).

Note (1): An employee covered by Clause (b) above will be entitled to vacation on the basis outlined therein if on his fourth or subsequent service anniversary date he achieves 1000 days of cumulative compensated service; otherwise his vacation entitlement will be calculated as set out in Clause (a). Any vacation granted for which the employee does not subsequently qualify will be deducted from the employee's vacation entitlement in the next calendar year. If such employee leaves the service for any reason prior to his next vacation, the adjustment will be made at time of leaving."

ARTICLE III - NEGOTIATIONS DURING TERM OF AGREEMENT

The parties to each Collective Agreement specified in Appendix 'A' to this Agreement confirm the desirability of settling by mutual agreement, during the term of this Master Agreement, any matter that is a source of dissatisfaction to either party, the settlement of which requires a change in such Collective Agreement, and agree to take every reasonable means to resolve any such matter during this Master Agreement.

If any such matter or matters cannot be settled by mutual agreement, during the term this Master Agreement, such matter or matters may be progressed during the next open period of the Collective Agreement in accordance with the following conditions.

The issues that any individual Union may desire to raise during the next open period of any collective agreement in association with other Unions in concerted negotiations can be segregated into the following categories:

1. Common demands advanced by all Unions entering into concerted negotiations. Examples: wages, vacations, general holidays, health and welfare, etc.
2. A demand submitted by an individual Union which is not, and could not be, of common interest to all other Unions engaged in concerted negotiations.
3. A demand submitted by an individual Union which, by its nature, is of common interest to all Unions and, therefore, could have been made a part of the common demands referred to in Item 1.

Any individual Union that desires during the next open period of the collective agreement to enter into concerted negotiations with one or more other Unions shall, in addition to the common demands specified in Item 1, be entitled to include in such concerted negotiations, and subsequent conciliation proceedings, if necessary, any individual demand or demands that can properly be classified under Item 2. This entitlement shall also apply to any individual railway.

If, during the time limit specified in the last paragraph of this Article, an individual Union has raised an issue or issues coming within the scope of Item 3 above, and such Union desires during the next open period to be associated with other Unions in concerted negotiations, and subsequent conciliation proceedings, if necessary, then such Union will be required

to withdraw the Item 3 issue. If, however, a Union wishes to progress a matter coming within the scope of Item 3 above, such Union must disassociate itself from the other Unions that may be negotiating in concert and negotiate independently with such railway in respect of all of its demands.

Any item to be progressed under this Article must be submitted by the one party to the other no later than March 31, 1988 or such later date as may be mutually agreed to by the parties to the individual collective agreements.

ARTICLE IV - CONTRACTING OUT

The existing letter on contracting out of work is deleted and the following Article is to be inserted in each Collective Agreement listed in Appendix 'A' as a substitute therefor:

"Effective February 3, 1988, work presently and normally performed by employees who are subject to the provisions of this collective agreement will not be contracted out except:

1. when technical or managerial skills are not available from within the Railway; or
2. where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
3. when essential equipment or facilities are not available and cannot be made available at the time and place required (a) from Railway-owned property, or (b) which may be bona fide leased from other sources at a reasonable cost without the operator; or
4. where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; or

5. the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
6. where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

The conditions set forth above will not apply in emergencies, to items normally obtained from manufacturers or suppliers nor to the performance of warranty work.

At a mutually convenient time at the beginning of each year and, in any event, no later than January 31 of each year, representatives of the Union will meet with the designated officers to discuss the Company's plans with respect to contracting out of work for that year. In the event Union representatives are unavailable for such meetings, such unavailability will not delay implementation of Company plans with respect to contracting out of work for that year..

The Company will advise the Union representatives involved in writing, as far in advance as is practicable, of its intention to contract out work which would have a material and adverse effect on employees. Except in case of emergency, such notice will be not less than 30 days.

Such advice will contain a description of the work to be contracted out; the anticipated duration; the reasons for contracting out and, if possible, the date the contract is to commence. If the General Chairman, or equivalent, requests a meeting to discuss matters relating to the contracting out of work specified in the above notice, the appropriate company representative will promptly meet with him for that purpose.

Should a General Chairman, or equivalent, request information respecting contracting out which has been covered by a notice of intent, it will be supplied to him promptly. If he requests a meeting to discuss such contracting out, it will be arranged at a mutually acceptable time and place.

Where the Union contends that the Company has contracted out work contrary to the provisions of this Article, the Union may progress a grievance commencing at (*). The Union officer shall submit the facts on which the Union relies to support its contention. Any such grievance must be submitted within 30 days from the alleged non-compliance.

- * CP - The last step of the grievance procedure.
- CN - The Regional Vice-president level (or equivalent)."

ARTICLE V - BENEFIT PLANS

A. Employment Benefit Plan - Life Insurance and Sickness Benefits

The Employee Benefit Plan Supplemental Agreement dated March 20, 1975, as amend& from time to time for employees of Canadian Pacific Limited and the Employee Benefit Plan Supplemental Agreements dated July 25th, 1986 and September 29th, 1986 for employees of Canadian National Railways will be amended with respect of employees governed by this Master Agreement to conform with the following:

(i) Life Insurance

Effective March 1, 1988 the group life insurance coverage will be increased from \$15,000 to \$20,000 for employees who have compensated service with the Company on or subsequent to March 1, 1988, subject to the terms of the contract with the underwriters.

(ii) Sickness Benefits

Effective January 1, 1988, the sickness benefit payments for claims which originate on or after that date are as follows:

Weekly Base Pay

Sickness Benefit

\$120.01 and over

70% of base pay
(i) up to a maximum weekly benefit of \$370 or
(ii) up to the Unemployment Insurance maximum weekly benefit payment,
whichever is the greater.

Less than \$120.01

\$80 or 75% of weekly base pay,
whichever is less.

A claimant in receipt of Unemployment Insurance Sickness Benefits will have such benefits supplemented to equal his Sickness Benefit payment.

B. Dental Plan

The Dental Plan Agreements applicable to employees governed by this Master Agreement shall be amended to conform with the following:

- (a) Effective with the treatment commencing on or after March 1, 1988, covered expenses will be defined as the amounts in effect on the day of such treatment as specified in the relevant Provincial Dental Association Fee Guides for the years 1987 and 1988.
- (b) Effective March 1, 1988, an Eligible Employee and his/her Dependents shall be entitled to claim reimbursement of Covered Expenses incurred up to a maximum of \$900 per person per calendar year after an annual calendar year deductible amount of \$35 per family has been applied.
- (c) For employee hired on or after March 1, 1988, eligibility for Dental Benefits will be extended from six to twelve months of compensated service.

C. Extended Health Care Plan/Extended Health Care and Vision Care Plan

The Extended Health Care Plan Agreements and the Extended Health and Vision Care Plan Agreements applicable to employees covered by this Master Agreement shall be amended to conform with the following:

(a) Hearing Aids - Coverage

Effective January 1, 1988, Eligible Expenses as defined in the Extended Health care Plan Agreements/Extended Health and Vision Care plan Agreements will include charges for hearing aids not covered by Workers' Compensation up to a maximum of \$200 per employee in any five consecutive years.

(b) Eligibility

For employees hired on or after March 1, 1988, eligibility for benefits under the Extended Health Care Plans/Extended Health and Vision Care Plans will be extended from six to twelve months of compensated service.

D. Life Insurance Upon Retirement

Effective March 1, 1988, amend Life Insurance upon Retirement provisions to read:

"An employee who retires from the service of the Company on or subsequent to March 1, 1988, will, provided he is fifty-five years of age or over and has not less than ten years' cumulative compensated service, be entitled, upon retirement, to a \$4,000 life insurance policy, fully paid up by the Company."

E. Medicare Allowance

Effective March 1, 1988, amend all collective agreements included in Appendix "A" to provide for the termination of the medicare allowance provision.

ARTICLE VI - CONSOLIDATION OF SENIORITY UNITS

The Consolidation of Seniority Units issue will be handled by the put-ties in accordance with the award of Arbitrator Dalton L. Larson dated April 11, 1988 as clarified by him in his supplemental award dated June 17, 1988.

ARTICLE VII - SENIORITY LIST DISTRIBUTION

Collective Agreement provisions for revising and posting seniority lists will be amended to read:

- "(a) Seniority lists shall be updated and posted at the headquarters locations of all employees concerned, on or before March 31, June 30, September 30 and December 31 of each year. A copy of said list shall also be furnished to the union representatives of the employees.
- (b) Seniority lists shall be open for correction for a period of sixty calendar days on presentation in writing of proof of error by the employee or his representative to the employee's immediate supervisor.
- (c) Except by mutual agreement, seniority standing shall not be changed after becoming established by being posted for sixty calendar days following date of issue, without written protest."

ARTICLE VIII - TRANSFER OF WORK

All Collective Agreements applicable to TCU, BMW, CSCU and CBHT will be amended to contain the following as an Article entitled, "Transfer of Work":

"When through an unusual development it becomes necessary to transfer work from a seniority terminal, Division or Region, to another seniority terminal, Division or Region, not more than a sufficient number of employees to perform such work shall, in seniority order be given the opportunity to transfer, carrying their seniority rights with them. The proper officer of the Railway and the General Chairman shall co-operate to determine the number of employees who shall transfer.

Employees who transfer under this provision shall after 90 calendar days lose their seniority at the seniority terminal they left."

ARTICLE IX - INCIDENTAL WORK RULE (CN only)

The BRC, IBB and IBEW Collective Agreements shall be amended to include the following Article entitled, "Incidental Work Rule":

"(a) Except as is permitted by this rule, work will be performed by employees in the craft to which such work is now assigned. Notwithstanding any other rules to the contrary, in order to efficiently complete an integrated work assignment involving the work of two or more crafts, an employee in one craft may be required to do the work of another craft -for short periods of time, provided that the employee is qualified to perform the work. The work that may be required to be done under this clause shall include the operation of any equipment or machinery necessary for the completion of the integrated work assignment;

(b) The maximum period of time that an employee in one craft may be assigned to do the work of another under paragraph (a) shall be limited to thirty (30) minutes in respect of any one such integrated work assignment;

(c) Within sixty (60) days of the signing of this award, the company shall identify to the appropriate General Chairmen which integrated work assignments will be required to be performed under this incidental work rule. Any subsequent change to those integrated work assignments shall be communicated to the General Chairman or the Local Union Representative concerned prior to implementation;

(d) No employee shall be laid off as a direct result of the application of this incidental work rule;

(e) Notwithstanding any of the above, this incidental work rule shall not be implemented unless and until substantially the same provisions are made to apply to those unions presently represented by the Canadian Council of Railway Shopcraft Unions."

ARTICLE X - BEREAVEMENT LEAVE

Effective March 1, 1988 the Bereavement Leave provisions in the various collective agreements are deleted and replaced with the following:

"Upon the death of an employee's spouse, child, parent, brother, sister, step-parent, father-in-law, mother-in-law, step-brother or step-sister, the employee shall be entitled to three days' bereavement leave without loss of pay provided he has not less than three months' cumulative compensated service. It is the intent of this article to provide for the granting of leave from work on the occasion of a death as aforesaid, and for the payment of his regular wages for that period to the employee to whom leave is granted.

Definition of Eligible Spouse:

The person who is legally married to the Eligible Employee and who is residing with or supported by the Eligible Employee, provided that if there is no legally married spouse that is eligible, it means the person that qualifies as a spouse under the definition of that word in Section 2(1) of the Canadian Human Rights Benefit Regulations, so long as such person is residing with the Eligible Employee."

ARTICLE XI - JURY DUTY

Effective March 1, 1988 amend Jury Duty provisions by adding a new paragraph (d) to read as follows:

"Notwithstanding the provisions contained in the last sentence of paragraph (c) above an employee's annual vacation will, if the employee so requests, be rescheduled if it falls during a period of jury duty."

ARTICLE XII - USE OF PRIVATE AUTOMOBILE

Effective January 1, 1988, where an automobile mileage allowance is paid such allowance will be 28 cents per kilometer.

ARTICLE XIII - SEMI-ANNUAL PLAN

The provision of the award of the arbitrator dated April 11, 1988 dealt with on pages 65-68 is resolved as follows:

- a) Effective January 1 and July each year the Company will provide a written report to each Union setting out in specific detail any Plans that it has that involve displacement or lay off of any employee represented by that Union or otherwise involve a permanent decrease in the work force. The report will be provided to the General Chairman of each union within 15 days of the commencement of the period. The first six month report will be produced July 1, 1988.
- b) The report will identify which changes will be of a technological, operational or organizational nature and which changes are expected to be made because of a permanent decrease in traffic, a normal reassignment of duties arising out of the nature of the work, or normal seasonal staff adjustments. Additionally, the report shall state the number of employees who are likely to be affected, their geographical location, when the changes will occur and the plans to preserve their employment including training or placement into vacant permanent positions.
- c) The Company will meet with the General Chairmen within 30 days of the receipt of the report to discuss it and its implications for the work force. The purpose of the meetings is to convey and discuss information x-related to planned changes and not to negotiate the actual changes or restrict the entitlement of the Company to make changes to rationalize its work force or to displace or lay off employees consistent with collective agreement provisions.
- d) No employee may be laid off or displaced as a result of a planned change of the nature contemplated in (b) unless and until the employer has substantially complied with the above provisions and a planned change has been included in a report.
- e) If, during any six month period between report publishing dates the Company plans to initiate a change of the nature contemplated in paragraph (b) above, which will have adverse effects on any employee, and that was not included in the current report, the appropriate General Chairman will be contacted and the change will be made if mutually agreed upon. If mutual agreement is not reached, the Company may place the issue at any time before the arbitrator at the Canadian Railway Office of Arbitration who shall be

authorized to abridge the time limit feature and/or permit a special report to be delivered to the General Chairman in the event of an emergency. For Organizations signatory hereto who do not belong to the Canadian Railway Office of Arbitration, the issue or issues will be submitted to a single Arbitrator who shall be the person from time to time occupying the position of Arbitrator for the Canadian Railway Office of Arbitration

ARTICLE XIV - LETTERS OF UNDERSTANDING

The following agreed upon provisions are resolved as follows:

- (a) The Companies are prepared to review with any of the Unions so desiring, any Letters of Understanding not contained in the applicable Collective Agreements.
- (b) The Unions' demands with respect to Pension Indexing is resolved on the basis of Attachment 2 to Section C of Memorandum of Understanding dated October 22, 1987.
- (c) The Unions' demands with respect to Eligibility for Disability Pension is resolved on the basis of Attachment 3 to Section C of Memorandum of Understanding dated October 22, 1987.
- (d) The Unions' demands with respect to voluntary retirement at age fifty-five (55) with no penalty (CNR), (TTR) and VIA Rail Passes on CN and TTR are resolved on the basis of Attachment 4 (Revised) to Section C of Memorandum of Understanding dated October 22, 1987; that is on the basis of Memorandum of Agreement dated December 3, 1987.

The parties to this Master Agreement agree that the above items contained in this Article XIV will not be included in any collective agreement.

ARTICLE XV - COVERAGE

Employees who were in the service of the Companies signatory hereto on February 3, 1988 were entitled to, and have already received, any amount of increased compensation that may be due them under the terms of this Agreement for time worked subsequent to December 31, 1986.

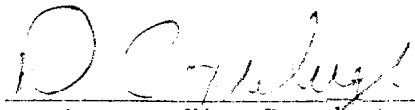
ARTICLE XVI - GENERAL


Each agreement referred to in the Preamble hereof, as revised to conform with this Master Agreement, shall remain in effect until December 31, 1988, and thereafter subject to three months advance notice in writing from either party to the Agreement of its desire to revise, amend or terminate it. Such notice may be served at any time subsequent to September 30, 1988.

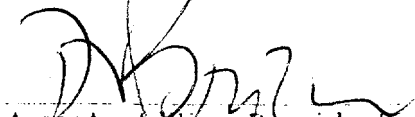
SIGNED AT OTTAWA, Ontario this 29th day of July, 1988.


FOR THE COMPANIES:

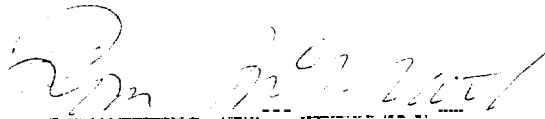
FOR THE EMPLOYEES:


Assistant Vice-President
Labour Relations
Canadian National Railway Company


/Chairman, Negotiating
Committee, Associated Railway
Unions


Assistant Vice-President
Industrial Relations
CP Rail



/ Vice-President
Brotherhood of Maintenance
of Way Employees



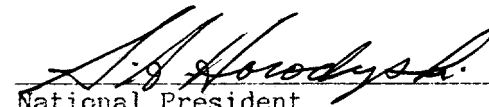
National Vice-President
Canadian Brotherhood of
Railway Transport and
General Workers



National President
Canadian Signal and
Communications Union



National Vice-President
Transportation-Communications
Union



National President
Canadian Division
Brotherhood Railway Carmen of
the United States and Canada



System General Chairman
International Brotherhood of
Electrical Workers



International Representative
International Brotherhood of
Boilermakers, Iron Ship
builders, Blacksmiths, Forgers
a n d Helpers

APPENDIX "A"

LISTING OF COLLECTIVE AGREEMENTS
COVERED BY THE ASSOCIATED RAILWAY UNIONS
(CANADIAN NATIONAL RAILWAY COMPANY)

<u>ORGANIZATION</u>	<u>AGR #</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
<u>B.M.W.E.</u>			
Brotherhood of Maintenance of Way Employees	10.1	All BMW Employees	CN Rail
	10.2	Steel Bridge Gangs and Danforth Bridge Shop	CN Rail
	10.3	Work Equipment Employees	CN Rail
	10.4	Regional Masonry Gangs	CN Rail
	10.5	Welding Employees	CN Rail
	10.6	Diving Gangs	CN Rail
	10.7	Cooks and Cookees	Atlantic St. Lawrence & Great Lakes Rg. CN Rail
	10.8	Track Employees	CN Rail
	10.9	Bridge and Building Employees	CN Rail
	10.13	Extra Gang Labourers	CN Rail
	10.25	Grain Door Repairmen Lakehead Terminal	Thunder Bay Ont CN Rail
	10.61	All BMW Employees	TerraTransport
	10.62	Steel Bridge Gangs	TerraTransport
	10.63	Work Equipment Employees	TerraTransport
	10.64	Regional Masonry Gangs	TerraTransport
	10.65	Welding Employees	TerraTransport
10.66	Diving Gangs	TerraTransport	

ORGANIZATION**AGR #****CLASSIFICATION/EMPLOYEES****LOCATION**C.B.R.T. & G.W.**Canadian Brotherhood of
Railway, Transport and
General Workers**

- | | | |
|------|------------------------------------------------------|-------------------------------------------------|
| 5.1 | Clerks and other classes
of Employees | CN Rail |
| 5.3 | Cooks and Cookees
Boarding Car Department | Prairie Region
CN Rail |
| 5.4 | Excavating Machine
Operators | Prairie & Munt.
Regions, CN Rail |
| 5.15 | Revenue Accounting
Department Employees | Montreal, Que.
CN Rail |
| 5.62 | Wharf Employees
(including Stock Yard) | Halifax, N.S.
CN Rail |
| 5.65 | Deckhands | Sarnia Tug
Barges, CN Rail |
| 5.66 | Masters and Engineer
Officers | Sarnia Tug
Barges, CN Rail |

T.C.U.**Transportation
Communications
Union**

- | | | |
|-----|--------------------------------------------------|-----------------------------------|
| 6.1 | Clerks and other classes
of Employees | TerraTransport |
| 6.3 | Wharf Freight Handlers | Montreal, Que.
CN Rail |

B.R.C.**Canadian Division
Brotherhood Railway
Carmen of the United
States and Canada**

- | | | |
|-------|------------------------------------------------|-----------------------------------|
| 12.35 | Carmen, Helpers,
Apprentices | CN Rail
TerraTransport |
| 12.10 | Classified & Common
Labourers | TerraTransport |
| 12.12 | Station & Office Bldg
Employees | Montreal, Que. |
| 12.21 | Garage Employees | TerraTransport |

ORGANIZATION

AGR #

CLASSIFICATION/EMPLOYEES

LOCATION

- 10.67 Cooks and Cookees TerraTransport
- 10.68 Track Employees TerraTransport
- 10.69 Bridge and Building Employees TerraTransport
- 10.73 Extra Gang Employees TerraTransport

C.S.C.U

Canadian Signals and Communications **Union**

- 11.1 S & C Foremen, S & C
Senior Technicians, S & C
Technicians, S & C
Testmen, S & C Leading
Maintainers, S & C
Maintainers, S & C
Leading Mechanics, S & C
Mechanics, S & C
Assistants, S & C
Apprentices, S & C
Linemen, S & C Helpers
CN Rail
- 11.8 S & C Foremen, S & C
Senior Technicians, S & C
Technicians, S & C
Testmen, S & C Leading
Maintainers, S & C
Maintainers, S & C
Leading Mechanics, S & C
Mechanics, S & C
Assistants, S & C
Apprentices, S & C
Helpers
Pt. St. Charles
S & C Shop
CN Rail
- 11.21 S & C Foremen, S & C
Senior Technicians, S & C
Technicians, S & C
Testmen, S & C Leading
Maintainers, S & C
Maintainers, S & C
Leading Mechanics, S & C
Mechanics, S & C
Assistants, S & C
Apprentices, S & C
Helpers
TerraTransport

<u>ORGANIZATION</u>	<u>AGR #</u>	<u>CLASSIFICATION/EMPLOYEES</u>	<u>LOCATION</u>
<u>I.B.E.W.</u>			
International Brotherhood of Electrical Workers	12.40	Electricians, Helpers, Apprentices	CN Rail TerraTransport
	12.12	Station & Office Bldg Employees	Montreal, Que.
<u>I.B.B.</u>			
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	12.33	Boilermakers, Blacksmiths, Helpers, Apprentices	CN Rail TerraTransport
	12.02	Mechanics & Helpers in Reclamation Plants under the jurisdiction of the Purchases & Materials Management Department	Moncton, N.B. London, Ont. Transcona, Man.

LISTING OF COLLECTIVE AGREEMENTS COVERED
BY THE ASSOCIATED RAILWAY UNIONS
(CP LIMITED AND SUBSIDIARY COMPANIES)

<u>ORGANIZATION</u>	<u>AGR.#</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
Brotherhood of Maintenance of Way Employees	41	Employees in Track & B&B Department	CP Rail Dominion Atlantic Rly, Esquimalt & Nanaimo Rly, Quebec Central Rly, Grand River Rly, Lake Erie & Northern Rly Company
	42	Extra Gang Labourers	CP Rail Dominion Atlantic Rly, Esquimalt & Nanaimo Rly, Quebec Central Rly Grand River Rly, Lake Erie & Northern Rly Company
		Employees in Rail Reclamation Plants	Lines in Canada
		Operators, Power Machines	Lines in Canada
		Employees, Work Equipment Repair Shops	Lines in Canada
Canadian Signal & Communications	1	Employees in Rail Butt. Welding	Lines in Canada
		S&C Foreman, S&C Assistant Foreman, S&C Senior Technician, S&C Technician, S&C Leading Maintainer, S&C Maintainer, S&C Maintainer's Helper, S&C Wireman , S&C Fitter, S&C Gang Helper, S&C Labourer, S&C Assistant Shop Foreman, S&C Leading Repairman, S&C Repairman and S&C Junior Repairman	Lines in Canada
Transportation- Communications Union		Clerks and other classes of employees	Lines in Canada
		Freight Handlers	Montreal Wharf
		Security Guards, Department of Investigation	Lines in Canada

<u>ORGANIZATION</u>	<u>AGR.#</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
Canadian Division Brotherhood Railway Carmen of the United States & Canada		Carmen, Carmen Apprentice, Carmen in Training, Carmen Helper, Coach Cleaner, including Leading Hands in these classifications.	CP Rail
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers		Boilermaker, Boilermaker Apprentice, Boilermaker Helper, Blacksmith, Blacksmith Apprentice, Blacksmith Helper, including Leading Hands in these classifications.	CP Rail
Grand River Railway Company, <u>Lake Erie & Northern Railway Company</u>			
Transportation- Communications Union		Dispatchers, Operators, Clerks and Shedmen	System

LISTING OF COLLECTIVE AGREEMENTS COVERED
BY THE ASSOCIATED RAILWAY UNIONS (JOINT CN and CP PROPERTIES)

<u>ORGANIZATION</u>	<u>AGR.#</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
<u>Toronto Terminals Railway Company</u>			
Canadian Brotherhood of Railway, Transport & General Workers	5.32	Operating, Maintenance of Way, Building, Mechanical and Central Heating Plant and Washroom Employees	Toronto Union Station
	5.37	Office Cleaners	Toronto Union Station
Canadian Signal & Communications Union	11.6	Signal Maintainers and Helpers	Toronto
	7.06	Train Movement Directors	Toronto
<u>Shawinigan Terminal Railway Company</u>			
Canadian Brotherhood of Railway, Transport & General Workers	5.54	Clerical Employees, Labourers, Diesel Maintainers	Shawinigan, Quebec

IN THE MATTER OF A DISPUTE

AND

1 IN THE MATTER OF AN ARBITRATION UNDER THE
MAINTENANCE OF RAILWAY OPERATIONS ACT, 1987

5 **BETWEEN:**

CANADIAN PACIFIC LIMITED

AND

10 CANADIAN NATIONAL RAILWAY COMPANY

(the "Companies")

15 **AND:**

ASSOCIATED RAILWAY UNIONS

20 (the "Unions")

25

Arbitrator: Dalton L. Larson

30

Counsel for Canadian Pacific: Forrest C. Hume, Esq.

Counsel for Canadian National: Alphonse Giard, Q.C.

35

Counsel for Associated
Railway Unions: Harold F. Caley, Esq.

40

Place of Hearings: Quebec City, Quebec

Date of Hearings: April 18, 20 and 22, 1988

45

AWARDCabooseless Trains

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This is the last issue remaining in dispute to be resolved under the Maintenance of Railway Operations Act 1987. Certain issues relating to wages, contracting out and yard switching limits were resolved at an early stage by my award dated February 3, 1988. All other issues that remained outstanding were deferred by the terms of that award. In particular, the issue relating to cabooseless trains was referred back to the Companies and the United Transportation Union for further negotiations. The award provided that if the matter was not settled by April 2, 1988, or such further time as might be agreed between the parties, it was to be referred back to the Arbitrator for determination.

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Unfortunately, those negotiations were unsuccessful. By a letter signed jointly by the parties dated March 16, 1988, I was advised that they had been unable to reach agreement and that they would be unlikely able to do so within the time given, or at all. They requested that I schedule further hearings and determine the issue by arbitration. Pursuant to that request, hearings were then held in Quebec City on 'April 18, 20 and 22, 1988 to complete the formal proceedings on the issue.

1 1. Background of the Negotiations

5 Along with its other demands served on the Unions on
October 1, 1986, the Companies proposed to amend all of the
10 appropriate collective agreements so that they might operate
trains and undertake yard movements without a caboose.

15 Previous to that time, the issue had been elevated to
one of national prominence. Over two years earlier, the
Companies had filed separate applications with the Railway
20 Transport **Committee** of the Canadian Transport Commission
(the "**RTC**") in April 1984 to exempt them from certain of the
25 requirements of the Uniform Code of Operating Rules which,
for all practical purposes, mandates that they operate with
a caboose on certain classes of assignments.

30 Following that application, the **RTC** held lengthy
35 hearings across Canada on two separate occasions. In those
proceedings, the Companies took the position that
technological change had rendered the caboose obsolete. It
40 said that the rear end of the train could now be remotely
monitored by an **electro-mechanical** device called the "**End of**
45 Train Information System" (**ETIS**) and that other systems had
been developed to monitor the other critical aspects of the
operations such as **Hot Box** and **Dragging Equipment Detectors**.

a

1 The Companies felt that the caboose could be removed and the
rear train crew relocated to the locomotive cab without
5 reducing safety, which then became the primary focus of
those deliberations.

10

The first set of hearings conducted by the RTC related
to whether cabooseless train operations could be usefully
15 tested. Those hearings were held in Moncton, Montreal,
Hull, Toronto, Winnipeg and Vancouver between December 3,
1984 and January 30, 1985. The Commission then issued its
20 decision in that matter on September 16, 1985 and ordered
that a comprehensive testing program be undertaken to
25 determine the actual risks involved in such operations.
Those tests were conducted over a period of nine months.

30

Following the tests, the second series of hearings were
conducted by the RTC. Those hearings were held in Moncton,
35 Montreal, Hull, Toronto, Winnipeg, Moose Jaw and Vancouver
between September 23, 1986 and June 11, 1987. They consumed
a total of 54 days during which time it heard over 200
40 witnesses.

45

1 At the time that the Companies served their bargaining
demands in this set of negotiations on October 1, 1986, the
5 **RTC** had **only** started its second set of hearings.
Furthermore, although it had completed its hearings at the
time of the national railway strike on August 24, 1987, it
10 was not in a position to publish its decision. That
combination of events gave rise to the Maintenance of
15 Railway Operations Act 1987 and these proceedings. Indeed,
arbitration hearings had been in process under that Act over
a period of several months when the **RTC** issued its decision
20 on December 14, 1987.

25
2. The Decision of the Railway Transport Committee

30 **Because** the decision had such a significant impact on
these proceedings, it is important to understand precisely
35 what the **RTC** did and the scope of its Order.

40 In the first place, it determined that in making
regulations governing the railway industry, it had to
balance several competing interests. It said that its
45 **primary** mandate was to protect the safety of the public and
railway employees. At the same time, it said that it had a
responsibility to ensure that the main corporate interests

1 of efficiency and profit are not unduly diminished; it said
that it must also ensure that railway costs are kept low
5 and that the railway system is adequate so as to favour
reasonable and competitive freight rates for the shippers
and to foster strong domestic and international trade; and
10 finally, it said that it must take into account the economic
well-being of Canadians. Those priorities are encapsulated
15 in a statement at p. 157 where it said:

20 "In this particular case, there is no question that the
prime directive is to ensure that the net risks that
the public and the employees must face as a result of
the presence of railways does not increase as a result
of operational changes. The forecasted savings,
25 improved competitive position, and improved profits are
secondary. Similarly, the matter of job security of
the rear crew is a secondary consideration."

30 More importantly for our purposes, the **RTC** refused to
take jurisdiction in relation to the working conditions in
locomotive cabs leaving that matter to be determined through
35 traditional industrial relations processes. At p. 186 of
its decision it said:

40
45 "During the regional hearings it was alleged that the
locomotive cabs are currently dirty and without
adequate toilet facilities -- a condition that would
worsen if the rear train crew were relocated to the
locomotive cab. The implication was that this
condition may cause a reduction in safety. Although
the suitability of working conditions is of general
concern to the **RTC**, as a matter of occupational health
and safety, we do not consider the adequacy of sanitary

1 facilities or the cleanliness thereof a matter that
directly or indirectly would alter the current level of
operational safety. We therefore find that this issue
5 is not relevant to the matter at hand but is more
appropriate for management-labour arrangements as
outlined in the Canada Labour Code, Part IV."

10 As one might expect, since the RTC refused to stipulate
a comprehensive and detailed set of minimum working
conditions in locomotive cabs, that became a major issue in
15 the proceedings before me.

20 On the safety issue, the RTC found that it was not
reasonable to demand that all risks associated with railway
operations be removed but that the general public are
25 entitled to a level of safety that is commensurate with the
risks they voluntarily take or accept in normal everyday
30 life. It said that under those circumstances, no decision
should be made that would foreseeably result in an "overall"
additional risk to the public or employees. It explained
35 the use of the word "overall" by reference to the fact that,
in some respects, caboosless operations may involve some
40 additional risks but in other respects, it may be less. It
said that any additional risks created by caboosless
operations would not serve to defeat the application if
45 conditions could be imposed to alleviate them or that the
net effect of the greater risks in some areas, weighed
against the lesser risks in other areas, was not greater.

1 The RTC then undertook to measure those risks. It said
that since the most critical result of an unsafe condition
5 is personal injury or death, the ultimate measure of the
safety of a particular system is the frequency of death and
injury resulting from those operations. It then identified
10 thirty different incident categories in respect of which an
unsafe condition might arise as a result of operating
without cabooses, **analyzed** the frequency of their occurrence
15 during the testing period and then determined whether each
constituted an increased risk. Some of those incident
20 categories were such things as detection of hot boxes or
dragging equipment not detected by wayside equipment,
25 detection of sticking brakes, detection of leaking cars or
containers of dangerous commodities, instances where trains
had to be operated in reverse for long distances or loss of
30 braking capability at the head end where the rear crew had
to apply brakes in an emergency. Finally, it **summarized** the
35 overall results and made its decision at **p. 204:**

40 ". . . . we are convinced that the railways have now
reached a stage in the development of technology which
permits the removal of cabooses and the relocation of
the rear crew to the operating cab of the locomotive
without overall additional risks to the safety of the
45 employees and the public, providing certain conditions
involving the use of modern technology and changes in
operating practices, as outlined in the following
Order, are met."

1 With that, the **RTC** ordered that **CP** and **CN** be exempted
from Rule **90A** of the **UCOR** for the purpose of operating
5 cabooseless trains provided that they meet some **35** specific
conditions. Some of the more important of those conditions,
bearing on the issues in these proceedings, require that
10 cars with dangerous commodities be marshalled in certain
configurations depending on the length of the train; each
15 trainman and conductor on a cabooseless train is to be
provided with an operational portable two-way radio;
appropriate seating accommodations are to be provided in the
20 lead locomotive cab of a cabooseless train for the conductor
and at least one trainman or in a trailing unit; the lead
25 locomotive cab must be equipped with a fold-out permanent
table for the conductor with indirect lighting; sanitary
facilities in all locomotive cabs must comply with Part VI
30 of the On Board Trains Occupational Safety and Health
Regulations made pursuant to Part IV of the Canada Labour
35 Code; at least one locomotive in the lead locomotive must be
equipped with first aid equipment; and a cabooseless train
shall not be operated in reverse until an employee positions
40 himself on the leading car of the movement.

1 3. Function of the Caboose

5 The caboose was originally introduced by the railways
as a fundamental adjunct of operating the train. In the
10 days of mechanical braking systems the head end crew
operated the locomotive and the tail end crew operated the
brakes. If the locomotive crew could not adequately control
15 the speed of the train, they would signal the rear crew by
whistle to set the brakes on the caboose and/or adjacent
cars. Or, if the train broke in two, the crew at the rear
20 end was stationed such that they could set the brakes and
stop the train.

25
 When the air brake system was invented, the operational
function of the rear crew disappeared. The locomotive crew
30 was then able to apply the brakes from the lead unit along
the whole of the train consist without the assistance of the
rear crew. If the train broke apart, the rear portion of
35 the train was designed to stop automatically.

40
 The air brake system was a major technological
innovation but it did not have the effect of eliminating the
45 need for the caboose. The caboose continued to serve as an
office for the conductor (who had considerable paperwork in
earlier days), as a mobile supply depot for tools, as a

1 platform for **signaling** to other trains and wayside crews, to
facilitate the realignment of switches after the train had
5 passed, to carry **freight** and passengers including dead
heading employees to and from jobs and as living quarters
for crews. And, of course, it continued to have a
10 significant safety function. It constituted a fail-safe
mechanism in the event that the air brake system failed; it
15 served as a platform for the guidance of the train in making
reverse movements; and it was used to store first aid and
safety equipment as well as serve as shelter in the event of
20 the failure of the locomotive in inclement weather.

25 The caboose also has considerable symbolic importance
to members of the United Transportation Union and other rail
employees. In September **1883**, a railway caboose was the
30 site of a meeting of eight brakemen who founded Lodge No. 1
of the Brotherhood of Railroad Trainmen in **Oneonta**, New
York. The Brotherhood was one of the four original rail
35 unions that subsequently joined together to form the United
Transportation Union as it is known today.
40
45

1 4. Cabooses Under the Collective Agreements

5 In Canada, regulatory control of trains, including the
caboose, was assumed by the government in the form of the
Canadian Transport Commission (now the National
10 Transportation Agency) and its earlier predecessors. It
established comprehensive procedures and rules for the
15 operation of trains, primarily in the form of the Uniform
Code of Operating Rules. While that regulatory system was
successful in balancing the interests of the companies,
20 their employees, shippers, customers and the public, insofar
as cabooses are concerned, it effectively subordinated
25 collective bargaining to a lesser role in that process.

30 As a consequence, there are only a few provisions in
the collective agreements that regulate the use of cabooses.
Indeed, there is no standard provision in the various
35 collective agreements that expressly requires that freight
trains be required to operate with cabooses on the main
lines except where the train is operating with a reduced
40 crew.

45

1 The **CN** Agreement **4.3** requires that **yardmen** be furnished
with a caboose in transfer service; Agreement **4.16** requires
5 that reduced freight crews be supplied with steel cabooses
and that employees on a snow **plow** will be supplied with a
caboose.

10

 Article **42** of the **CP** Eastern Region agreement
15 stipulates that "**Yard** crews in transfer service will be
provided with a caboose or other suitable car properly
equipped." Article **30** of the **CP** Prairie & Pacific Regions
20 agreement requires that "**Crews** regularly set up in freight
service, will be supplied with a regular caboose or other
25 suitable car properly equipped."

 A few other provisions refer to cabooses in such a way
30 that the requirement to use them can be necessarily implied.
In addition, there are provisions in various articles,
35 memoranda of agreement and letters of understanding which
deal with such things as the manner in which cabooses are to
be assigned, equipped, etc.

40

 In all events, the Companies have **recognized** that the
45 agreements would constitute an impediment to operating
trains without cabooses, even where the **RTC** has given
regulatory approval. However, they took the position that

1 the agreements do not require that the cabooses be manned.
They said that since the **RTC** has now determined that trains
5 can be operated without a caboose and the rear crew member
re-positioned to the front of the train, the failure to
remove the collective agreement impediments would mean that
10 they would have to operate with an empty caboose.

15 Although the collective agreements are not as clear as
one would prefer, I am unable to agree that they do not
require that the cabooses be manned. To the extent that
20 they require that cabooses be used, it is implicit that a
crew member must be positioned in them. If the collective
25 agreements are not amended or an exemption is not granted
from the application of them, the Companies will not be
entitled to reposition the rear crew to the head of the
30 train and operate with an empty caboose.

35 Even the Order of the Railway Transport Commission
cannot be read to have that effect. The **re-positioning** of
the crew member was a condition imposed by the **RTC** on
40 cabooseless operations. It determined that a train could be
operated safely without a caboose if, amongst other things,
45 the conductor is repositioned to the head of the train. The

1 exemption from Rule 90A granted by the RTC does not purport
to permit the Companies to reposition the crew member while,
5 at the same time, operating a caboose. Nor do the
collective agreements.

10

5. Arbitrability of the Issue

15

During negotiations the original demand of the
Companies to permit them to operate cabooseless trains went
20 through a series of permutations. At first they sought to
amend all the agreements "so that the Company may operate
25 trains and yard movements without a caboose.*'

30

During conciliation proceedings, however, the Companies
recognized that cabooseless operations could not be
instituted until the RTC gave regulatory approval even if
35 the collective agreements were amended to permit it. Their
demand was, therefore, made contingent upon amendment of the
Uniform Code of Operating Rules.

40

45

Finally, in post-conciliation negotiations the demand
was further amended. A Memorandum of Understanding signed
by the parties in these proceedings on October 22, 1987

1 identified the Companies' proposals "which remain unresolved
and which are submitted to arbitration." The proposal
5 relating to caboosless trains was formulated as follows:

10 "The UTU to give the Companies a letter acknowledging
that in the event the RTC rules in favour of
caboosless trains there will be no collective
agreement impediment to the operation of trains or yard
engines without a caboose."

15

When the issue came to be adjudicated, the Unions
asserted that the demand constituted a violation of the
20 material change provisions of the collective agreements.
They said that the demand was untimely and improper. They
argued that the Companies were estopped from advancing the
25 demand in negotiations and that if such a change were to be
made, it had to be processed under the material change rule.

30

What the material change rule does is prohibit the
35 introduction of any material change in working conditions
that will have "materially adverse effects on employees"
without giving as much advance notice as possible to the
40 General Chairman concerned. The prohibition is extended by
the next sentence of the provision until an agreement is
45 reached or a decision is rendered on the matter by an
arbitrator.

1 Ironically, **CN** had taken that route as part of its
early strategy. On April 12, 1984 it served notice of a
5 material change on the Union that it intended to remove the
caboose. That notice was served at virtually the same time
that it applied to the **RTC** for exemption from **UCOR 90A**. The
10 **UTU** argued before the arbitrator that the notice was
premature because no such change could be introduced until
15 regulatory approval had been given. That argument was
accepted by the arbitrator who found that the notice was
void and of no effect.

20
Now that the **RTC** has exempted the Companies from **UCOR**
25 **90A**, the Unions say that the material change provisions must
be **utilized** and that the matter is not **arbitrable** in this
forum.

30
With respect, that argument cannot be accepted. The
35 doctrine of **estoppel** has no application because the
Companies did not represent to the Unions that they would
not advance the issue in negotiations. As for the demand
40 being untimely, if the existence of a special procedure in a
collective agreement for the resolution of certain kinds of
45 disputes operated to preclude negotiations to change the
agreement, it would virtually emasculate collective
bargaining. Arguably, the existence of a job classification

1 procedure would preclude negotiations to change the wage
schedule. Procedures to resolve work jurisdiction disputes
5 might preclude negotiations over seniority and union
security.

10 The fact is, however, that the material change
provisions were designed to accommodate the introduction of
15 changes during the term of the collective agreement. They
cannot be taken to preclude negotiations about those same
provisions or any other provision of the collective
20 agreement that touch upon them. They address the
contractual commitment of the parties once the collective
25 agreement has been **finalized** but does not affect the right
of either party to seek to amend the agreement during
negotiations for a revised collective agreement.

30
I find that the issue is **arbitrable** and that I have
35 jurisdiction to make a determination on the issue under the
provisions of section 8 of the Maintenance of Railway
Operations Act 1987. Although the substance of the issue
40 changed throughout the various stages of negotiations, the
entitlement of the Companies to operate caboosless trains
45 was a matter in dispute between the parties at the time of
my appointment. Indeed, by signing the Memorandum of

1 Agreement of October 22, 1987 the Unions **recognized** the
viability of the issue. They must be taken to have **attorned**
5 to my jurisdiction and cannot now be heard to say that it is
not **arbitrable**.

10 The Companies also asserted that my jurisdiction was
limited in certain material ways.

15 Although the primary case for the **UTU** was that trains
should not be operated without cabooses under **any**
20 circumstances, it put an alternate position. It said that
if cabooseless operations are permitted, the railways will
25 **realize** large and perpetual cost savings and that the
employees should share in those savings. It proposed a
number of ways in which extra compensation ought to be paid
30 to trainmen in the circumstances. It also argued that there
are certain types of freight train service and yard
35 movements in which it would be unsafe to operate without a
caboose and that in other respects, provision must be made
for a clean and adequate working environment.

40

45

1 The Companies argued that those were new issues and
that my jurisdiction extended only to the determination of
5 whether trains could operate without cabooses. In effect,
they would have it that I could impose no conditions upon
the operation of cabooseless trains but only answer the
10 question in either the affirmative or the negative.

15 If that were the case, I would refuse to exempt the
Companies from those provisions of the collective agreements
that require the operation of cabooses, as would have, I
20 suspect, the Railway Transport Committee. It is only the
conditions that make cabooseless operations viable.

25 In all events, the proposals put by the Unions do not
comprise the issue. The issue is whether the Companies are
30 entitled to operate cabooseless trains. The proposals of
the Unions constitute nothing more than a suggested solution
35 of the issue.

40 Essentially the same objection was taken by the
Companies on the earlier issue of employment security which
was determined in my award of April 11, 1988. They argued
45 that certain proposals arising out of that issue put by the

1 Unions constituted new issues and should not be entertained.
That objection was not sustained then and I will not sustain
5 it now.

10 The Companies also argued that the **RTC**, now the
National Transportation Agency, has jurisdiction over the
health and safety of railway employees and that its
15 jurisdiction is paramount. Although he did not say so
expressly, Counsel for **CN** implied that, as an arbitrator
acting under the Maintenance of Railway Operations Act 1987,
20 I have no jurisdiction to make determinations relating to
such matters because the **RTC** occupied the field by its
25 decision of December 14, 1987.

30 I reject any such suggestion. The **RTC** is entitled to
prescribe regulations governing the railway industry but not
for purposes of determining the rates of pay, hours of work
35 or other conditions of employment, all of which are subject
to collective bargaining under the Canada Labour Code. Its
jurisdiction to prescribe minimum safety standards does not
40 deprive me of jurisdiction to address the safety of
employees as a matter going to their working conditions
45 provided that I do not purport to prescribe a standard less
than that established by the **RTC**.

1 The RTC has an overlapping jurisdiction to determine
certain minimum working conditions of employees but only as
5 a matter arising out of considerations prescribed by the
National Transportation Act. For example, as we have seen,
it declined to base its decision on the job security of the
10 rear crew as being of "secondary consideration" and with
respect to locomotive cab conditions, it said that the
suitability of working conditions is of general concern to
15 the RTC but concluded that "this issue is not relevant to
the matter at hand but is more appropriate for management-
20 labour arrangements as outlined in the Canada Labour Code
Part IV."

25
Under section 8(1) of the Maintenance of Railway
30 Operations Act 1987, I have jurisdiction over "all matters
relating to the amendment or revision of each collective
agreement that, at the time of (my) appointment (were) in
35 dispute." The matter of whether the Companies ought to be
entitled to operate without cabooses was in dispute at the
time of my appointment. In the event that I should accede
40 to that proposal, the manner in which that should be done is
an inherent part of that issue. The Unions are not confined
45 to merely resisting the demand but may also present counter
offers in the event it is accepted. In that sense, the
arbitration proceedings are a mere surrogate or extension of

1 the negotiations that ought to have occurred earlier.
Subject to the terms of reference stipulated by the
5 legislation, what would have been a permissible **topic** of
those negotiations is an appropriate subject of arbitration.

10 The Companies also argued that some of the proposals of
the Union were not **arbitrable** on the grounds that they were
15 settled or resolved between the parties emanating from the
earlier award of February 3, 1988. They said that the
proposals involving additional compensation to trainmen
20 required to work on cabooseless trains was the subject of
that award; a proposal with respect to dead heading was
resolved by the Memorandum of Agreement dated October 22,
25 1987; an issue with respect to "held away from home terminal
time" was dropped by the Union and was not progressed to
30 arbitration; the issue of job security was resolved by the
award of April 11, 1988.

35 The problem with those arguments is that they also
confuse what is in issue with the manner in which those
40 issues might be resolved. That the award of February 3
prescribed certain general wage increases does not preclude
45 the arbitration board from resolving the issue of
cabooseless trains by requiring the Companies to pay some
employees compensation in consideration of the elimination

1 of them. Or, the board might even prescribe compensation to
all employees, not as a **matter** going to wage rates as a
5 discrete issue but as a condition of the manner in which
cabooseless trains may be operated. The same can be said of
all of the other proposals of the Unions that were said to
10 have been resolved in the earlier proceedings.

15 Moreover, it would not be inappropriate to observe that
the Companies themselves proposed a number of new conditions
that they said they would accept if I were to permit
20 cabooseless operations. Those conditions were no different
in nature than the proposals put by the Unions. If those
25 conditions are within my power to adjudicate, so are the
proposals of the Unions.

30
35 **6. Elimination of the Caboose**

The first position of the Union was that the caboose
should not be eliminated and that it should continue to be
40 required on all train operations. It said that the
Companies put in little evidence to justify their demand
45 except the decision of the **RTC** which, it argued, constituted
an attempt to have the arbitrator abdicate his role to the
RTC. Furthermore, it said that the exemption granted by the

1 **RTC** from **UCOR 90A** extends only to mainline traffic; it does
not permit the railways to operate without cabooses on yard
5 and transfer service. Implicit in that argument was that I
should not amend the collective agreements to permit
cabooseless operations beyond those **authorized** by the **RTC**.
10

 Strictly speaking, Rule **90A** didn't require cabooses at
15 all but only that "conductors and engine men will see that
trainmen are at the front and rear of trains in position to
observe the safe operation of trains and when practicable,
20 exchange signals when approaching and passing stations."
Any platform that would have achieved that purpose would
25 have been within the rule.

 It is true, however, that to the extent that cabooses
30 were required, it was only on freight, mixed and work
trains. All others were able to be operated without
35 cabooses under the rule. The only impediment to operating
without a caboose in yard and transfer service is the
various collective agreements and, in respect of those, not
40 all such assignments are required to be operated with a
caboose.
45

1 On the evidence, on Canadian Pacific, the total number
of yard and transfer assignments supplied with a cabooses in
5 circumstances other than for Rule **90A** is eight; on Canadian
National it is **29**. In each of those cases cabooses are
provided to supply shelter and lunchroom facilities to the
10 yard crews where they are located long distances from the
main yard facilities.

15
 Yet, that precise effect does not appear to have been
well appreciated. In rebuttal, the Companies asserted that,
20 "**the RTC** undertook . . . an exhaustive three and one-half year
examination of all aspects of caboosless trains that had a
bearing on operational and occupational safety and health.
25 The conclusion reached was that there should be no
restriction as to classes of service or type of territory
30 over which trains may be operated without a cabooses subject
to the safeguards set forth in **RTC** Order No. **R-41300** being
35 **met.**"

40 The fact is that the **RTC** did not directly "**authorize**"
caboosless operations in any sense of that word. Nor did
it decide that there should be no restrictions as to class
45 of service or type of territory where trains are operated
caboosless. What it decided was that in overall terms, it

1 would not be unsafe to undertake cabooseless operations and
for that reason exempted the Companies from the provisions
5 of Rule **90A** under the conditions stated.

10 The effect of that exemption can be taken to extend
only to the limits of the Rule. Since Rule **90A** did not
govern yard assignments, but only "freight, mixed and work
15 trains in motion between stations" the exemption did not
have the effect of **authorizing** cabooseless operations in
yard and transfer service. That question remains open as a
20 matter of collective bargaining. Furthermore, the **RTC**
decided only that cabooseless freight, mixed and work train
operations taken as a whole will not be unsafe but left it
25 open that particular assignments carry an increased risk.

30 Nevertheless, it is my view that the evidence
represented by the decision of the **RTC** relating to safety
35 was properly admitted in these proceedings. And the Unions
did not present any evidence in rebuttal sufficient to
dislodge its major conclusions. No real purpose would have
40 been served to have required that the parties replicate the
evidence that was put to that tribunal. Nor did the parties
45 attempt that task except, perhaps, in respect of certain
limited types of assignments, as will be seen.

1 The problem is that the continued operation of cabooses
cannot be justified solely on the ground that they provide
5 certain amenities to the rear trainman or even to a crew.
As we have seen, after air brakes were introduced and the
caboose no longer served an operational function, it
10 continued, nevertheless to have a significant safety
function. The amenities that the caboose provided were mere
15 secondary benefits that accrued to the rear crew. Since the
technology has, once again, advanced sufficiently to
maintain the same level of safety as exists at present,
20 without a caboose, when that technology is implemented the
primary justification for them will disappear.

25
One must face the reality that, except for safety, the
expense of them far outweighs their usefulness. In
30 proceedings before the **RTC**, the Companies estimated that
they would achieve savings of between \$57.6m to \$77.2m per
35 annum if the caboose were eliminated. In operational terms,
those savings translate to the extra costs that must be
borne to operate them if they are not eliminated. Put in
40 those terms, it is quite simply an excessive cost if only to
provide shelter, restroom and eating facilities,
45 particularly where those can be provided on the locomotive,
albeit at some sacrifice of space, or where 'suitable
alternate facilities may be provided in other locations.

1 As much as one might regret it, from a social and
historical perspective, the issue cannot now be whether the
5 caboosees ought to be eliminated; there can be no other
conclusion. The only question is under what circumstances
10 should that occur.

15 7. Layoff of Rear Crew Members

20 The Unions took the position that since both carriers
testified before the **RTC** that the rear train personnel would
be moved to the front of the train, that commitment should
25 be reinforced in the collective agreements by a provision
that would prohibit the layoff of any employee as a result
of the elimination of the caboose.
30

35 In fact, the commitment given by the Companies to move
the rear crew to the locomotive was made part of the **RTC**
Order. Under section **1.2**, it is a condition of cabooseless
40 operations that the rear crew be stationed in the front end
of the train:

45 "**1.2** A conductor on a cabooseless train shall be
stationed in the operating cab of the lead locomotive."

1 The problem is that the proposal goes considerably
further than the Order in that the contractual protection
5 against layoff would extend to all employees whereas the
condition mandated by the **RTC** extends only to conductors.

10 In considering the viability of the proposal, it is
important to understand that the savings projected by the
15 Companies derive not from using fewer operating personnel
but from the maintenance of the cabooses alone. That is
discussed by the **RTC** at pp. **62-63** of its decision in these
20 terms:

25 **"Labour Force Reduction**

30 Both carriers testified that the rear train personnel
would be moved to the front of the train and would not
be removed from the train consist as a result of a
shift to cabooseless operations. According to **CN** and
CP, there will, therefore, be no employment reduction
in the running trades if their applications are granted
in the foreseeable future. **CP**, however, pointed out
35 that there would be a net annual reduction of about **500**
person-years mainly in the caboose maintenance
functions. The net annual reduction in the railway
labour force on **CN** is estimated to be **520** person-years
40 for a total of **1020** person-years reduced as a result of
a change to cabooseless operations."

45 what that means is that the primary burden of
cabooseless operations will not fall upon the operating
personnel but on the shop craft employees who maintain the
cabooses. Approximately **1020** full time equivalent shop

1 craft positions will be lost from that source alone. On the
other hand, whether a particular person actually loses a job
5 will depend upon such things as attrition rates in the
geographical area, the ability of the shop to absorb those
employees into other work and the employment security
10 agreements.

15 The problem is that if I were to accede to the demand
of the Unions, it would have the effect of expropriating a
significant proportion of the advantage of operating
20 cabooseless trains. Only moderate savings would be able to
be realized.

25 I think that under the circumstances where the shop
craft employees have considerable protection against the
30 loss of employment under the employment security provisions
of their collective agreements, it would be improper to
preclude the efficacy of the change by imposing a general no
35 layoff rule. However, since it is an condition imposed by
the RTC that conductors shall be stationed in the lead
40 locomotive, it should be made part of the contractual base
regulating the relationship of the parties that operating
45 personnel should be protected. The **UTU** is not party to any
employment security provisions.

1 Accordingly, the collective agreements shall be amended
to provide as follows:

5 "**No** trainman shall be laid off as a direct result of
operating caboosless trains."

10

15 8. Requirement to Operate Cabooses on Certain Trains

20 The Unions said that although they were willing to
discuss terms for caboosless operations on through freight
trains, they were not willing to consent to caboosless
operations on certain assignments. It said that through
25 freight trains represent the vast majority of daily train
starts throughout Canada and that the restricted assignments
on which they proposed to retain the caboose would
constitute only a very small percentage of train starts each
30 day. In this part, I will discuss each separate assignment
in respect of which the Unions seek to retain cabooses.

35

40 (1) Road Switcher and Way Freight Assignments

45 These assignments typically do not operate in one
direction but rather are normally engaged in industrial
switching service and as such may operate in a series of
forward and reverse movements. The Unions suggested that

1 was reason alone to retain cabooses on these assignments.
The Companies, however, argued that does not dictate that a
5 caboose is required. They said that, by comparison,
frequent forward and reverse movements are made by virtually
every yard assignment, the vast majority of which are
10 accomplished without a caboose.

15 On analysis, I do not agree that cabooses will serve
any operational or safety purpose on road switcher and way
freight assignments. Subject to what follows, I decline to
20 amend the collective agreements to require it.

25 (2) Work Trains in Yard and Road Service Including
Self-Propelled Cranes, Flangers and Pile Drivers

30 "Work train" is a general term used to describe the
train service or equipment that is used to perform the
various types of maintenance at a terminal or **enroute**. They
35 might be required to do such things as load and unload
track, ties and ballast. They are assignments which also
40 require many forward and reverse movements and typically
work in remote areas. In addition, the train is often
unable to return to its home terminal for long periods of
45 time. Even when they are assigned to areas that are not
remote, the crew, while on duty, is normally confined to the

1 immediate vicinity of the railway tracks. In those
circumstances, the caboose serves as an office, lunchroom
5 and washroom as well as a platform for making reverse
movements.

10 The Companies said that in the absence of a caboose,
work trains in road service will necessarily be provided
15 with locomotives equipped with a table for the conductor to
perform his paperwork. In addition, they said that such
locomotives will meet the other requirements of the RTC
20 Order in respect of sanitary facilities including toilet,
refrigerator and washing facilities. They said that work
25 trains in yard service currently provided with a caboose
will be supplied with suitable alternate facilities to meet
the collective agreement requirements for the shelter of
30 yard service employees.

35 The problem is that, at least with respect to trains in
yard service, the conditions of RTC Order No. R-41300 do not
40 **apply**. The only way to guarantee the commitment of the
Companies is to make them part of the contractual regimen
under the collective agreements.

45

1 To that extent, this was a demand of the Unions with
which I agree. Therefore, while I am not persuaded that
5 caboose should be required on any specific type of service,
as will appear, nevertheless, I intend to require that
10 shelter and sanitary facilities be provided to employees on
work trains in yard service at least equivalent to those
required on freight trains. What is equivalent shall be
15 made subject to agreement by the Union in default of which
it may be referred to arbitration by the Canadian Railway
Office of Arbitration.

20

(3) Snow Plows and Snow Control Equipment

25

As with work trains, snow **plows** must make numerous
forward and reverse movements in order to properly clear the
30 snow from the track. Sometimes they become lodged in
mountainous snow banks. The Union said that to venture
35 outside in such circumstances can be impossible or
dangerous. In addition, these assignments often require
long hours in remote areas.

40

The Companies argued that in most such circumstances it
45 is safer to position employees in the locomotive than in the
caboose. They said that locomotives are much heavier and
equipped with protective steel plating at both ends which

1 makes the likelihood of mishap negligible when compared to
movements headed by a caboose. They said that the fact that
5 they must work long hours in remote areas is met by existing
provisions of the collective agreements which permit
employees to book rest and obtain meals within the time
10 limits specified.

15 In my view that evidence does not support the retention
of cabooses on snow **plows** and snow control equipment.

20

(4) Reverse or Shoving Movements Over One Mile

25 Because the **RTC** will continue to require an employee to
be stationed at the rear of the train on reverse movements
under Rule 1.28 of its Order, if the caboose is removed, it
30 will mean that a trainman will have to hang on a ladder at
the side of the end car for that purpose.

35

The Unions took the position that over long distances
that could be unusually difficult and unsafe. They said
40 that in some circumstances it could be particularly
dangerous where, for example, the train is required to
operate where there is restricted side clearance, such as on
45 industrial sites. They said that long reverse movements are

1 uncommon and that to require cabooses on such assignments
would, therefore, involve minimal expense. It said that
5 many long reverse movements are done within a yard under
similar conditions to road switcher type service.

10 The Companies argued that the average reverse movement
most often consumes only a small portion of any tour of
15 duty. They said that cabooses have been provided in the
past, not to provide a platform on which to make reverse
movements, but in contemplation of the employee spending an
20 entire tour of duty in it, primarily on other duties. They
said that to continue to require cabooses only to facilitate
25 long reverse movements would not be productive.

30 It is in this one area that I must admit to having had
the greatest difficulty, partly because in the
implementation of cabooseless operations in the United
35 States, the collective agreements prohibit the operation of
trains in a reverse movement in excess of one mile without a
caboose. However, on reflection, the purpose of any such
40 restriction would be safety and in that respect the RTC
specifically considered long reverse **moves** and concluded
45 that no additional risk would be incurred by employees or
the public subject to UCOR 103 which prohibits the blocking
of public crossings at grade for more than five minutes. It

1 felt that the requirements of Rule 103 could be met by the
installation and proper calibration of a distant measuring
5 device to ensure that the crew would be able to determine
where the end of the train was located at any particular
moment.

10

In my view, if any particular long reverse move is
15 unusually strenuous or otherwise puts the employee into
unsafe circumstances, there is protection provided by the
Canada Labour Code, Part IV - Occupational Safety and
20 Health, in particular, Section 85 which permits an employee
to refuse to work. Nevertheless, I have provided a
25 procedure for the measurement of such assignments which may
result in a requirement for a caboose or that suitable
alternate arrangements be made. The procedure carries a
30 dispute resolution mechanism in the event that an agreement
cannot be reached on the practicability of any particular
35 assignment.

40

(5) Single Unit Operations

45

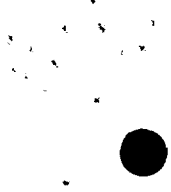
These are assignments where the train is operated with
only one engine.

1 The Unions argued that, in some circumstances, such
assignments might be unsafe if there were no caboose. For
5 example, they said that in northern Ontario there is one
such assignment operating between Thunder Bay and **Jelico**.
It operates in remote areas far from any roads or
10 telephones. They said that should engine failure occur in
such areas during the winter months a life threatening
15 situation could occur. They said that to address the
problem only by providing radios is not adequate because
prolonged radio failure occurs frequently. Furthermore,
20 they said that seating could be a problem in the locomotive
because often such trains operate with supervisors and
25 trainees along with the regular crew. They said those
employees are not covered by **RTC Order R-43100** and would be
required to stand during the whole trip.

30

 The fact is that the **RTC** said that even if there was
35 only one unit on the train, with proper clothing, and the
protection of the cab (in addition to the radios required to
be carried) there would be no significantly increased danger
40 to employees that would result from operating without a
caboose.

45



1 I do not consider that it would be appropriate to
review that conclusion even if were not to agree with it
5 completely. In addition, with specific regard to the
example given by the Union, the evidence was that in the
10 area between Thunder Bay and **Jelico** the track is such that a
rescue can be relatively easily undertaken in the event of
an emergency. There are **37** locations where there is a road
15 accessible year round from the highway to the main track
over the whole distance of **145** miles. There are also **18**
20 other locations where there are summer access roads that are
accessible in the winter months by snowmobile. In addition,
section forces are employed at six locations in that
25 territory which can be dispatched quickly by track motor
cars.

30 As for seating, Order **R-43100** requires that seating be
provided for all crew members. If there is only a single
35 unit, trainees and supervisors may not be able to be
accommodated under the Order in which case a caboose may
have to be provided but that is a decision that the
40 Companies will have to make at the time. If there are more
people than seats in the locomotive, some people will have

45

1 to remain behind or be accommodated in other ways. But the
point is that seating, under the circumstances, cannot be
5 used to found a requirement to provide a caboose on a
permanent basis on single unit operations.

10 In more general terms, dealing with all of the above
types of special assignments accumulatively, to the extent
15 that peculiar situations present themselves which cannot be
accommodated within the existing provisions of the
collective agreements, or as shall be prescribed, I intend
20 to provide a process for resolving them. But each of those
will be able to be dealt with discretely in the peculiar
25 circumstances of those cases without reference to any
general requirement for a caboose on specific types of
trains or assignments.

30 Nor do I accept that to retain the cabooses on
35 restricted assignments, would have only a minimal financial
impact, as was alleged by the Unions. The evidence was that
40 **212** cabooses on the **CN** system or **25%** of its fleet is
allocated for use on road switcher and way freight type
assignments; **157** cabooses or **19%** of its fleet is allocated
45 to yard and transfer service; on average **60** cabooses or **7%**
of its fleet is **utilized** in work train service which makes a
total of **429** or about **52%** of its fleet that would have to be

1 retained. For CP, 148 cabooses or 18% of its fleet is used
in road switcher and way freight service; 85 cabooses or 10%
5 of its fleet is allocated to yard and transfer service; and
26 cabooses or 3% is used in work train service.

10 I must admit that I would have been inclined to phase
in cabooseless operations by reference to these **restricted**
15 types of assignments but I have little time available to me
within which that could be done under the current collective
agreements. It was the Unions that refused to agree to
20 extend the term of the agreements for another year beyond
December 31, 1988. Nevertheless, there are several
25 conditions that must be met whereby cabooseless operations
may be undertaken. It will no doubt take some time before
that can be done and that will give both parties time to
30 prepare for cabooseless operations. There is also a 90 day
notice requirement which will provide a short phase-in
35 period.

40

45

1 9. Incorporation of the RTC Order
 Into the Collective Agreements

5 The Unions proposed that those conditions of Order R-
10 41300 that directly affect employees ought to be
 incorporated into the collective agreements. The Companies
 resisted the demand primarily on the basis that they are
15 effectively regulations and are outside of the control of
 the parties. They said that there is a large body of
 legislation governing the working conditions of employees
20 which the Unions have not sought to incorporate and that,
 just as it would be inappropriate to incorporate that
 legislation, it would not be proper to incorporate the terms
25 of the RTC Order.

30 It is precisely because the provisions of the Order are
 outside of the control of the parties that I think that they
 should be incorporated. In that manner, the parties will be
35 able to take control of the working conditions of the
 employees affected, at least above the minimums established
40 by the regulatory authority.

45

1 To be more accurate about the matter, I have determined
that since there may be occasions when cabooses may be
5 required, it would be inappropriate to delete the existing
provisions of the collective agreements governing the use of
10 them. However, a Memorandum of Agreement should be appended
to the agreements that will establish the terms and
conditions under which the Companies may operate in the
15 event that they wish to eliminate the caboose on a
particular train or assignment. Those terms and conditions
shall be as follow:

20
MEMORANDUM OF AGREEMENT

25
Cabooses

30 1. A caboose shall not be required on any train or
assignment provided always that the Company shall be in
compliance with the operating conditions set out
35 paragraph 10 herein. The provisions of this Memorandum
of Agreement shall not apply where cabooseless
operations are not undertaken on any particular train
or assignment.

40 2. Where the Company shall decide to operate any
particular train or assignment without a caboose and
has complied with all of the operating conditions, it
shall be exempted from the provisions of the collective
agreements that govern cabooses.

45 3. At least 90 days prior to the date on which the
Company determines that particular train or
assignment is to be operated without a caboose, a
notice shall be given to that effect to the General
Chairman with a copy to the Local Chairman. The notice
shall specify (a) which train or assignment is to be

1 operated without a caboose; (b) the type and class of
train or assignment involved; (c) the territory in
5 which cabooseless operations will occur; (d) when
cabooseless operations are to be implemented; and (e) a
statement that it has complied with all of the
operating conditions prescribed for cabooseless
operations.

10 4. Should the Union contend that the Company has not
complied with the operating conditions or that a
particular train or assignment is inappropriate for
cabooseless operations because of the length and
15 frequency of reverse movements or due to some other
circumstance that it considers would make cabooseless
operations impracticable, the Union shall so notify the
Company within 30 days of receipt of the notice,
outlining the particular circumstances which, in the
opinion of the Union, necessitate the use of a caboose
and the reasons therefore.

20 5. A meeting shall be convened between the appropriate
Company and Union officer within 15 days of receipt of
notification from the Union to discuss the Union's
claim. The meeting shall be limited to a determination
25 of whether (a) the length and frequency of reverse
movements are excessive, (b) whether any other
particular circumstance makes cabooseless operations
impracticable, and (c) whether such operating
procedures as may be proposed by the Company would
30 constitute a suitable alternative to the use of a
caboose. For purposes of this agreement, impracticable
means not reasonably capable of being done due to some
condition that impairs an employee's ability to perform
his duties but does not otherwise include
35 considerations of safety.

40 6. If agreement cannot then be reached, the issue in
dispute may be referred within 10 days of the meeting
to a further meeting of the General Chairman and the
Chief of Transportation, System, or their delegates for
further consideration.

45 7. Should agreement then not be reached, the issue in
dispute may, within 10 days of the meeting, be referred
to the Canadian Railway Office of Arbitration for
determination in accordance with the procedures
contained in the Memorandum of Agreement dated
September 1, 1971, as amended.

1 8. Where the Arbitrator determines that the length and
frequency of reverse moves are excessive or that any
5 other particular circumstance would make caboosless
operations impracticable or that alternate operating
procedures proposed by the Company are not suitable, he
may determine what alternate procedures would be
suitable or that caboosless operations not be
undertaken on that train or assignment.

10 9. Failure by the Union to provide notification or to
progress the issue to the next step within the time
limited by these provisions shall constitute a
conclusive indication that the Union agrees that it is
15 proper to operate that particular train or assignment
without a caboose.

20 10. Notwithstanding **any** of the above, no train or
assignment shall be operated without a caboose unless
the Company complies with the following operating
conditions:

25 (1) A conductor on a caboosless train shall be
stationed in the operating cab of the lead
locomotive. It shall be his responsibility to
visually monitor the condition of all trailing
units, to the extent possible, and to operate such
30 electronic devices, monitors and other equipment
as shall have been installed in the locomotive
designed to ensure the integrity of those trailing
units while in motion including any End of Train
Information Systems (**ETIS**), Distance Measuring
Devices (**DMD**) and Hot Box and Dragging Equipment
35 Detectors (**HBDE**). All such devices, monitors and
equipment shall be mounted in the cab of the
locomotive directly in front of the conductor on
the left hand side in a manner that gives him an
unimpeded view and easy access to them. In this
40 agreement, **any** reference to specific devices,
monitors or equipment includes all successor
technology which has the same or a similar
purpose.

45 (2) The conductor shall apply, test and remove
the **ETIS** equipment and change batteries as
required. However, when a train is subject to a
certified car inspection (**C.C.I.**), a qualified
employee other than a conductor, if readily
available, **may** be required to perform those
duties. All **ETIS** equipment shall be identifiable

1 by unit number. The Company shall maintain
performance records of each unit which shall be
reasonably accessible to the conductor at all
times.

5 (3) The conductor shall be advised of all
calibration locations for Distance Measuring
Devices prior to implementation of cabooseless
train operations on each territory involved.

10 (4) Each conductor and trainman on a cabooseless
train shall be provided with an operational
portable two-way radio, at least one of which
shall have dispatcher tone capabilities, where
15 practicable, before leaving a crew change point.

(5) Proper ergometric seating accommodations
shall be provided to the conductor as well as to
at least one trainman in the lead locomotive cab
20 of a cabooseless train. Such seating shall have a
high back that will provide support to both the
back and neck of the occupant plus folding arm
rests and shall otherwise be appropriate for the
work required to be done. The seating shall have
25 sufficient space around it to permit easy movement
within the cab.

(6) Sufficient seating shall be provided in a
locomotive cab such that no person will be
30 required to remain standing. Where trainees or
supervisors or dead heading employees are required
to be on board, the conductor shall deploy them
and the other crew members between the lead and
trailing units as shall best accomplish the
35 operating purposes of that train or assignment.

(7) At points where maintenance staff is
available, locomotives shall be dispatched in a
40 clean condition and shall be supplied with
adequate fuel, water, sand and drinking water.
Cabs shall be maintained in a tight and
comfortable condition. Crew members shall be
otherwise responsible for keeping cabs in a clean
and orderly condition en route between servicing
45 points.

1 (8) The lead locomotive cab of a caboosless
train shall be equipped with a fold-out or
5 permanent table sufficient in size and located in
such a manner that the conductor shall be easily
able to perform his clerical functions. The table
shall be provided with lighting that will not
require the cab ceiling light to be used to read
10 documents and that will not interfere with the
vision of the other crew members in that cab at
night. In addition, a secure cabinet shall be
provided in which to maintain documents, books,
pens, pencils and other things that are essential
to the work of the conductor.

15 (9) Each occupied locomotive cab shall be
provided with the following:

20 (a) proper toilet facilities including a
toilet which is of a self-contained chemical flush
type, or equivalent, located in a heated and **well-**
ventilated room. In addition, the room shall
contain a wash basin with hot and cold running
water along with hand cleaning and drying
supplies;

25 (b) a refrigerator which is not less than two
cubic feet in size with a capacity to maintain a
temperature of 4 degrees centigrade, or lower, and
30 **which is** otherwise capable of maintaining
perishable foods in a safe and sanitary manner;
and

35 (c) a single element electric hot plate
suitable for cooking, mounted in such a way that
it shall not interfere with the ordinary work
functions in the cab.

40 (10) A train or assignment may be operated in yard
or transfer service without a caboose or properly
equipped locomotive cab where equivalent alternate
shelter and other amenities are provided at a
location in reasonable proximity to where the
train or assignment is required to operate. In
45 the event of a dispute about whether such
alternate shelter and other amenities are
equivalent, it may be referred directly to the
Canadian Railway Office of Arbitration for
determination upon notice by either party.

1 11. The lead locomotive shall be equipped with tools
 (including brake hose wrench, wrecking cable, spare
 knuckles, hammer and cold chisel) and first aid
5 equipment (including a stretcher, first aide kit and
 blanket) all of which shall be placed in a storage
 space that will preserve the integrity of the equipment
 and will not interfere with the duties of the crew
 members.

10 12. The conductor shall be provided with a train
 consist print out, or equivalent, which shall indicate
 the total length of that train with slack fully
 extended.

15 13. Trainmen and **yardmen** required by the Company to be
 trained concerning the operation of caboosless trains
 shall be paid for actual time in attendance at such
 classes at an hourly rate equal to one eighth of the
20 daily minimum rate applicable to the class of service
 in which they are employed. In no case shall the
 payment be less than four hours. Spare board
 conductors and brakemen shall be paid at the applicable
 through freight rate.

25

30 10. Compensation

 As a premise to their claim for additional
35 compensation, the Unions asserted that the Companies have
 sought to justify the removal of the caboose and the
 relocation of the rear employee(s) to the front of the train
40 on the basis of major cost savings. They said that based on
 evidence given in the hearings before the **RTC** they estimated
45 that the savings break out to between **\$1.22** to **\$1.77** per
 caboose mile and that members of the United Transportation
 Union affected by the changes should be entitled to share in

1 those savings. They calculated that since each crew run on
CP Rail territory is about 140 miles, on a per crew basis
5 the average saving would amount to between \$170 and \$247.80
per run. They said that, in addition, other savings would
be realized in the future as a direct result of the
10 elimination of the caboose. As an example, they said that
yard engines whose sole purpose is to switch freight train
caboosees will likely be abolished and yard crews will likely
15 be reduced.

20 By contrast, the Unions took the position that costs to
trainmen are likely to rise as a result of cabooseless
25 operations. It gave the example of a CN Rail crew working
between Hornpayne and Armstrong, two terminal points
approximately 250 miles apart in northern Ontario. At
30 present the trips out and back take approximately seven to
nine hours with a layover of between ten to fifteen hours
35 such that total time away from home is between 24 and 32
hours. For that period it is possible to store adequate
40 food and other provisions in the caboose. The refrigerator
on the caboose is approximately 8 cubic feet. They said
that once the caboose is eliminated it will be impossible to
45 carry sufficient food for all crew members on the locomotive
for three or more meals away from home. They will,

1 therefore, be compelled to purchase dried or non-perishable
food. In some locations Company cafeterias and bunkhouses
5 are available but those are subject to large price
increases.

10 In consideration of those factors, the Unions urged
that employees working on caboosless trains be compensated
15 at the applicable rate of pay per class of service plus:

20 1. Fourteen (\$.14) cents per mile added to the basic
rate;

25 2. On trains of 2000 to 2500 feet in length, five
(\$.05) cents per mile plus an additional five (\$.05)
cents for each additional 500 feet;

30 3. All time occupied in train inspection to be
35 compensated for in accordance with terminal time
provisions;

40 4. When stopped, for all time occupied as a result of
ETIS failure, employees are to be paid in accordance
45 with terminal time provisions;

1 5. When running at reduced speeds due to an **ETIS**
failure, time to be paid for all miles travelled and,
5 in addition, employees are to be paid the difference
between the normal permissible track speed, less the
10 speed permitted by **RTC Order R-41300**;

15 6. An allowance of **30** minutes will be provided for
each occasion that the **ETIS** unit is handled.

20 In addition, the Unions urged that compensation should
be provided to employees who are not actually on duty and
that special arrangements should be made to accommodate
25 employees who are away from home. They said that the
Companies should be obliged to use alternate means of
30 transportation in dead heading train crews in order to
minimize their time away from home. Also, in order to
ensure that they not find it profitable to hold crews over
35 unnecessarily compensation should be paid as follows:

40 1. Employees in freight service held away as a result
of insufficient seating on a cabooseless train should
be paid in accordance with terminal time provisions in
45 addition to any other compensation payable;

1 2. Employees in freight service should be paid for all
time held away from their home terminal in excess of 5
5 hours at through freight rates **ie.** eighteen and three
quarters miles per hour; and

10 3. In no case should an employee be held at the away
from home terminal for more than **12** hours.

15 The Companies replied in several different ways to the
claim for additional compensation.

20 Firstly, they said that real compensation improvements
25 can be generated in only two ways. The first is by an
overall increase in efficiency with which labour is **utilized**
in producing the output of the business. The second is
30 through increases in skill, effort, responsibility or more
onerous working conditions -- factors which are normally
35 used in job evaluation procedures.

40 Secondly, they said that it is not a common industrial
practice to make wage adjustments to individual
classifications because of specific circumstances that may
45 lead to improved productivity. More specifically, **CP** Rail
took the position that productivity improvements are almost
never due to the labour factor but **"are** virtually always due

1 to the entrepreneurial skills of management in combining the
factors of production in a more efficient fashion" and to
5 technological change. It suggested that under the
circumstances, if one were to share the productivity gains
realized by the elimination of the caboose, there is no
10 reason why the UTU should benefit to the exclusion of other
employees such as track maintainers, **carmen** or clerks in an
15 office. To the extent that productivity improvements are
shared, the Companies argued that they should be shared with
all employees.

20
It is interesting to note at this stage, however, that
25 the Companies also took the position that I have no
authority to award a compensation increase to any employees
because they were the subject of a general wage increase
30 under my award of February 3, 1988 which exhausts my
jurisdiction in that respect.

35
Thirdly, the Companies said that insofar as the claim
for increased compensation is based upon job evaluation
40 factors, there is nothing that a trainman will be required
to do following the implementation of cabooseless operations
45 that is not a normal feature of the responsibilities he has
at present. The Companies said that the advancing

1 technology may change the manner in which a trainman works,
to some degree, but would not alter the overall content of
5 the trainman job in any material way. If anything, the work
will be easier.

10 **Fourthly,** they said that the Union's argument with
respect to longer time on duty as a justification for a wage
15 adjustment is not supportable. They said that trainmen are
already paid on a the basis of a combination of miles run
from terminal to terminal and hours on duty. If the time on
20 duty increases beyond a particular threshold relative to the
miles of the trip, the pay system converts from pay on a
25 mileage basis to pay on a time basis. They said that, in
fact, the elimination of cabooses could shorten the time on
duty because of the elimination of the requirement to switch
30 cabooses on and off trains. In all events, they said that
crews have the right to book rest after 10 hours on duty
35 with a reduced crew and 11 hours in those few instances in
which trains still operate with a full crew.

40 My view is that some compensation should be paid to
employees in consideration of the elimination of the
45 caboose. My own inclination would be to award compensation
increases to all bargaining unit employees in the **ARU** and
not just to the **UTU**, in the form of a one time lump sum

1 payment. On the other hand, a good case could be made that
since the savings to the Companies will recur from year to
5 year the compensation increases should be in the form of a
general wage increase.

10 Whatever the case, I do not accept that I have no
jurisdiction in the matter by virtue the wage increases
15 required to be made under the award of February 3, 1988.
Any compensation increases mandated under that award arose
on discrete considerations having no direct relation to the
20 operation of cabooseless trains.

25 Nevertheless, I chose not to address the matter of
compensation at this time. Even though the whole issue of
cabooseless trains was referred back to the parties under
30 the award of February 3, 1988 without success, I think it
would be appropriate to refer the rather more limited matter
35 of compensation back to the parties for further
negotiations. When negotiations broke down previously, the
issue of whether the caboose should be eliminated at all was
40 too big to settle to permit successful negotiations in other
less complex areas. By this award, the question of whether
45 cabooseless operations can be undertaken has been settled.

1 The rather more limited matter of compensation should now be
well within the ability of the parties to settle on their
5 own.

10 It may well be that the parties will decide that any
such question ought to be put over to the negotiations which
will be starting shortly for a new collective agreement
15 effective January 1, 1989. Or, the parties may feel, as I
do, that a lump sum payment to all bargaining unit employees
would provide employees with an adequate share of the
20 savings that will result to the companies and yet still
leave them with an ability to operate on a continuing basis
25 with a lower cost base while at the same time improving
their competitive position. Or, the parties may feel it
would be appropriate to provide compensation increases only
30 to members of the United Transportation Union in the form
suggested in these proceedings. Finally, the parties may
35 feel that it would be more appropriate that a general wage
increase to all bargaining unit employees would be
40 preferable.

45

1 Whatever the case, I think that the matter of
compensation for elimination of the caboose should be
5 decided by the parties. However, if within 30 days of this
award, the parties are unable to settle the matter, either
10 **party may**, within a further 10 days, notify Dalton L. Larson
that an impasse has been reached and that he should act as
an arbitrator under the collective agreement to resolve the
15 dispute. The arbitrator shall then prescribe the
compensation to be paid to employees in respect of the
elimination of the caboose on such terms as he shall
20 consider to be appropriate. The procedures to be used to
resolve that dispute shall be at the sole discretion of the
arbitrator. Each party shall pay one half of the fees and
25 expenses of the arbitrator.

30

11. Steering Committee

35

The Unions argued that the introduction of cabooseless
freight train and yard movements will bring with it numerous
40 problems that will not have to be resolved by this award
and that will have to be dealt with at the time that they
arise. They said that problems are inherent in any change
45 in policy, regulation or procedure, particularly when those

1 changes are as complex as this one and have such scope. They
said that an exclusive and effective channel of
5 communication must be opened to expedite resolution of these
new and sensitive situations.

10 To facilitate that goal, they proposed that steering
committees be established at each terminal comprised of a
15 certain number of Railway and Union representatives. They
suggested that special operating procedures might be devised
20 for a cabooseless freight train stopped on a bridge not
equipped with catwalks. On the other hand, there may be a
need on some subdivisions to identify dead radio spots or
25 points where emergency communication procedures ought to be
established with the train dispatcher.

30 The fact is, that by the provisions already prescribed,
I have established a form of steering committee although on
35 a system basis. In my view, that is an adequate forum in
which to deal with such problems. There is, on the
40 evidence, already a significant proliferation of local
committees that may have overlapping jurisdiction such as
the various health and safety committees established under
45 Part IV of the Canada Labour Code. I do not think it to be
necessary to establish another.

1 **12. Reservation of Jurisdiction**

5 That completes my award in this matter. By it, all
issues that were in dispute under the Maintenance of Railway
10 Operations Act 1987 have now been determined except certain
incidental matters referred back to the parties for further
discussions. However, in respect of each of those, should
15 any disputes arise, they will be resolved under the terms of
the collective agreements and not the legislation. It
remains to me only to reserve jurisdiction to correct any
20 mechanical or clerical errors that appear on the face of the
award, to clarify the award or to otherwise deal with any
25 disputes relating to implementation.

30 IT IS SO AWARDED.

 DATED this 18th day of July, 1988 at Tsawwassen,
35 British Columbia.

40 "DALTON L. LARSON"
Dalton L. Larson
Arbitrator

45 DLL/lag

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