
Chapter VIII

RAILROAD LABOR AND SAFETY

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INTRODUCTION

The majority of Canadian rail labor organizations are represented by a bargaining group called the "Associated Railway Unions." This organization brings together 18 unions under its umbrella. It represents the largest single bargaining unit in Canada. The Canadian Railway Labour Association represents the same unions for all purposes (including safety) other than collective bargaining. The Association consists of five major groups. They are:

- nonoperating employees 55,800
- shopcraft employees 18,800
- United Transportation Union
 - trainmen 14,500
 - enginemen 1,646
- Brotherhood of Locomotive Engineers 4,600

The United Transportation Union, the Brotherhood of Locomotive Engineers, and the shopcraft unions are associated with the unions of these names in the United States.

Collective bargaining has existed within the Canadian railroad industry almost since its beginning. Railroad employees were organized along craft lines. For many years they negotiated with railroad management as individual entities. Before 1947, an Act of Parliament compelled labor and management to negotiate periodically.³ As a result of a series of disputes, centering largely on the subject of wages, and a

strike in the 1950's, significant changes in labor-management relations began to occur. A movement toward joint negotiations gained momentum.

The safety of operating employees, locomotive engineers, conductors, and trainmen while operating trains is regulated by the Canadian Transport Commission (CTC). The safety of the rest of the rail employees is under the jurisdiction of Labour Canada. However, the jurisdictional clarity is somewhat clouded by the fact that Labour Canada has jurisdiction over the safety conditions of the operating employees' workplace environment during their off-hours (e.g., while they are laying over on a long trip). Labour Canada also has jurisdiction over the workplace of such employees as dining car employees even when the train is operating.

Labour Canada approaches its responsibilities for developing safety standards as much as it can from a generic point of view by considering problems common to all industries rather than considering problems on an industry-by-industry basis. The Department of Labour is currently in the process of developing a set of regulations that will standardize a minimum level of safety to be applied across all industries under its authority. CTC has not promulgated safety regulations related to the conditions of work for the operating employees under its jurisdiction.⁴

¹A Report on Canadian Passenger Rail Services (Department of Transportation, 1976).

²Figures taken from Stephen G. Peitchinis, *Labour-Management Relations in the Railway Industry*. Task Force on Labour Relations, Study 20 (Ottawa: Privy Council Office, 1971).

³Ibid. p. 230.

⁴The lack of regulation of the safety of those railway employees under the jurisdiction of CTC is a current source of disagreement between the Department of Transportation and the Department of Labour. The Department of Labour feels that regulations are necessary and that it should assume the jurisdiction, or alternatively, that the Department of Transportation should adopt its regulations. The unions are supporting the Department of Labour's position.

LABOR/RAILROAD RELATIONS

The railroad industry has experienced generally good relations between management and labor at the working level.⁵ Testifying to this fact is the long-standing existence of a plethora of committees at the local level—including those that deal with safety matters—that have, in many instances, evolved into consultative bodies that negotiate particular local matters with management. Despite the history of cooperation, the unions on the national level believe that the effectiveness of the labor/management committees that have been established to deal with safety problems at the local level would be enhanced by the participation of a Government body with the authority to regulate matters of safety. The Canadian Railway Labour Association believes that a cooperative arrangement in this regard between the Railroad Transport Committee (RTC) and Labour Canada would be beneficial and made the suggestion to RTC.⁶ At the present time, according to a national representative of the Canadian Railway Labour Association, a major priority of the unions with regard to railroad operational safety is the upgrading of track.

From a national perspective, it appears that in addition to the historical relationships, two other principal factors affect the way in which the unions and the railroads relate to each other with regard to safety. These factors are described below.

Canadian Injury/Disability Compensation System

The Canadian injury compensation system is a provincial responsibility and each of the provinces has its own compensation law. Thus, there is variety in the way in which the Canadian worker's compensation for injury and illness incurred on-the-job takes place. However, the approach to compensation in each of the provinces is similar. It is premised on a no-fault

concept in which the injured employee is entitled to compensation—which is paid for either directly or indirectly by the employer—and in which the injured employee is not permitted to sue the employer with regard to the injury or illness incurred.

The Province of Quebec, for instance, has implemented the no-fault concept to workmen's compensation through assigning wide-ranging responsibility to the Quebec Workmen's Compensation Commission, the five members of which are appointed by the Lieutenant-Governor in Council and serve on a full-time basis administering the claims of injured employees in Quebec.⁷ The Act provides for certain cooperative arrangements with other provinces when an employee also works in provinces other than Quebec.

⁷The Quebec Workmen's Compensation Act illustrates the scope of Canadian compensation law (ch. 159). Within its parameters, provisions are at once detailed as to compensation coverage and requirements and are wide-ranging in the latitude that they afford to the commission established by the law in administering certain provisions, such as that concerning rehabilitation. The law is divided into 15 major parts that treat the following subjects.

- a. **Definitions of terms**—defining the scope of the law to include those industries specified as well as those to be added under the law as well as clarifying who the intended participants in the compensation system are.
- b. **Compensation**—defining the general conditions under which compensation may be made available and how it is made available.
- c. **Fixing of compensation**—defining the benefit scale for survivors as well as for permanent and temporary disability. (For the latter two, compensation usually does not exceed 75 percent of the average annual earnings for the 12-month period immediately preceding the accident.)
- d. **Medical aid**—assuring the availability of adequate medical aid to the employee as well as choice of physicians; giving to the commission the latitude to determine all questions as to the necessity, character, sufficiency, or duration of medical aid.
- e. **Rehabilitation**—giving to the commission the latitude to take what measures they deem necessary in order to aid in getting injured workmen back to work and assist in their rehabilitation and lessening or removing any handicap resulting from their injuries.
- f. **Compensation commission**—establishing a five-member appointive commission as a corporation, vested with all the rights and powers generally belonging to corporations. One member to serve as president and one to serve as vice president must be chosen from among the district judges; giving to that commission certain powers, including the ability to reconsider any question at any time within its jurisdiction and the ability to render decisions

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⁵Peitchinis, *op. cit.*, p. 317.

⁶Letter from J. F. Walter, Vice Chairman, Canadian Railroad Labour Association, to G. H. Cooper, Executive Director, Railway Transport Committee, Canadian Transport Commission, Jan. 26, 1978.

The claims for compensation benefits are calculated on the basis of the employee's average earnings for a 12-month period preceding the

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- according to equity) and on the merits and justice of the case, not being bound to follow the ordinary rules of evidence. Instituting a mechanism for homologation of commission decisions by the superior court and establishing such judgments homologating decisions as final and without appeal. Giving to the commission broad regulatory powers within its area of jurisdiction.
- g. Contribution by the province providing for assistance by the provincial government in defraying commission expenses an annual sum not exceeding \$100,000.
 - h. Accident fund establishing an accident fund to be funded by contributions by employers in those industries identified under the first major group of industries set forth in this law. Contributions are made based on a percentage of an annual payroll; they may not be used for all industries in the major group or any other subgroup, but are, instead, determined by the commission.
 - i. Statements to be furnished by employers requiring reports of actual and anticipated payrolls for the preceding and upcoming years to be made to the commission by all employers in industries in the first major group.
 - j. Assessments—requiring the commission to assess a contribution to cover the compensation for injured employees in the appropriate category of industry, to maintain a reserve fund, to meet commission administrative expenses, and for other purposes.
 - k. Industrial diseases establishing that an employee is eligible for compensation when a disease due to the nature of any employment in which he was engaged at any time within 12 months previous to the date of his disablement; establishing the conditions under which the compensation will be made.
 - l. Preventive associations—establishing the right of employers in industries in the first group to form themselves into a group for purposes of accident prevention and may, with certain conditions, prescribe rules that will be binding on all employers in the particular class in industry.
 - m. Contribution by employers in industries in Schedule II relating to the commission to assess payment to meet its costs from the employers in the second major group in a manner similar to that in which funds are obtained for the accident fund.
 - n. General provisions—excluding the industries of farming or domestic service from coverage under the Act; setting down certain requirements as to suits for the recovery of fines provided for by the Act; and establishing that fines received belong to the commission and a retro part of the accident fund.
 - o. Compensation to blind workmen—defining blindness and setting forth conditions for reimbursement by the Ministry of Finance, under certain conditions, for compensation payable by reason an accident to a blind workmen.

In addition to these major sections, there are three schedules appended to the law. The first schedule sets forth those industries in which employers must contribute to the accident fund. The second schedule sets forth those industries in which the employers are individually responsible for paying compensation. The third schedule sets forth a description of various diseases and the processes leading to them.

accident; provisions are also made for dependent and survivor claims. In certain cases, the commission may authorize lump-sum payments or may advance a lump sum of compensation that will be due. Generally, however, the compensation is paid on a weekly basis.

For purposes of compensation payment, employers in Quebec are divided into two major groups by the statute. The first major group must contribute, based on a percentage of its annual payroll determined by the commission, to an accident fund. This accident fund is administered by the commission, and when an employee in an industry falling into this first major category is injured, compensation is made from this fund. The second major group is composed of industries in which employers are individually responsible for compensation of injured employees. Although the commission administers the compensation of employees in an industry failing into the second major category, the funds to pay for the compensation are not drawn from the accident fund. Employers in the second major category are also responsible for paying for a portion of the commission's administrative costs. Railroads fall into the second major group of employers and so are individually liable for payment of compensation to injured employees in Quebec.

As a general rule, as is the case in Quebec, the provincial acts cover employees in all industries—that is, there is not a specific compensation system solely for employees of a railroad industry. The laws establish provincial workmen's compensation commissions to administer the compensation laws and to decide, within the parameters of the law, how to compensate individual employees. The approach to workmen's compensation that the provincial laws take has been described as constituting an "inquiry system" rather than an "adversary system."⁸ In this system, the provincial commissions are given a fairly wide area of latitude with regard to the various benefits that can be made available to the injured employee. Although the degree of

⁸A Report on the Feasibility of Comparative Study of FELA With Alternative Compensation Systems, prepared for the Association of American Railroads by Richard J. Barber Associates, Inc., Jan. 14, 1975, p. 30 ff.

latitude provided varies from province to province, generally speaking, there is a provision made for the costs of all medical treatment and rehabilitation services, with no arbitrary financial or time limits placed on benefits. Total permanent disabilities are paid for life; there are provisions for survivor benefits; partial and/or temporary disabilities are monitored on a continuing basis by the workmen's compensation commission. In many cases, there are no waiting periods for the benefits to start.⁹

Once a compensation commission has taken over a case, it is responsible for assuring treatment, considering rehabilitation possibilities, providing reemployment counseling, as well as for defining the disability and making decisions concerning income continuation. The degree of disability is generally a medical judgment and since the commission has continuing jurisdiction and since temporary benefits have no time limit, the actual condition of the injured employee can be assessed with a minimum of external factors playing into the judgment. Benefits can be adjusted upward or downward by the commission as the situation warrants. In many provinces, the commissions place a great deal of emphasis on rehabilitation.¹⁰

Since the employee is guaranteed compensation for work-related injury and illness and since the employer is protected by law from suit, the issue of safety in the workplace is not a contentious issue between railroad employees and the railroads. Further, since the railroads are responsible for providing for the compensation of the injured employee, it is in their interest to hear and to respond to concerns about safety and to ensure that safety practices are put into place and observed.

Hours of Service

An employee's hours of service has not been regulated as a safety issue nor has it been dealt with legislatively. Rather it is a matter for negotiation between the labor unions and the railroads. At the present time, the hours-of-service

requirements for operating employees, engineers, conductors, and trainmen* in Canada allow employees discretion after 11 hours of service, as to whether they should continue to work without a break. This provision places the responsibility for the safety of employees as it relates to fatigue on their own shoulders.

In negotiating with the railroads, the Associated Railway Unions does not bargain separately with CP and CN; instead, the unions bargain with representatives of both railroads at the same time. In the early 1970's. there were a series of disputes between labor and the railroads, some of which went to arbitration. It was during this period that the unions organized themselves into a single powerful bargaining group. However, the principal concern of the unions has been job security. Safety conditions have not been the subject of a railroad labor dispute per se, although safety was brought out as an issue in a case concerning crew size during this period.¹¹

At the present time, the union; participate in many of the railroads safety efforts at the working level. The three major areas in which labor/management cooperation in safe y-related matters has taken place are:

Safety Committees—Unions urge their members to participate and use this forum to understand the nature of the workplace and to pass on the worker's point of view to the management. However, national union representatives have expressed doubts as to whether these committees are optimally effective.

Rehabilitation Programs—The railroads and the unions are working out a relationship whereby the unions at the local level can encourage its members with drug or alcohol abuse problems to seek professional help in one of the rehabilitation programs that the railroads made available.

* All other railway employees are governed by the hours of work section of the Canadian Labour Code.

¹¹For instance, in a December 1974 arbitration report, Judge Emmett Hall decided that a job security plan based on attrition should be provided for all workers with 8 years seniority. Also, in January 1975, Judge Hall said in another arbitration report that railroads could eliminate the job of rear brakemen on freight crews.

⁹Ibid., p. 31.

¹⁰Ibid., p. 31 ff.

Training Programs—Where training programs have been developed, the unions have supported them even where they have replaced the informal apprenticeship programs for qual-

ification to take on another job. National union representatives would like a greater emphasis on training (see next section).

LABOR/GOVERNMENT RELATIONS

The unions played a major role in the safety inquiry of 1971. Since that time, they have been active participants in the tripartite forum, the Railway Safety Advisory Committee, established by CTC to promote railway safety in Canada. The Canadian Railway Labour Association has membership on the Railway Safety Advisory Committee and member unions have representation on the various technical committees that consider possible amendments to existing standards or possible new standards. By this participation, the unions are able to participate fully in the safety regulation of railroads.

In addition, however, the unions have identified areas that affect the safety of railroad employees and have brought these areas to the attention of CTC. The unions raised many issues at the safety inquiry and have continued to follow and to participate in their resolution. For instance, in January 1978, the vice chairman of the Canadian Railway Labour Association outlined the current safety-related concerns of his Association in a letter to the executive director of the Railway Transport Committee of CTC.¹² Many of the concerns expressed were similar to those expressed during the safety inquiry; other concerns grew from more recent incidents. The listing of the Canadian Railway Labour Association's concerns with regard to the safety of railroad employees included all aspects of railroad safety—the immediate work environment, the operating environment of the trains, and the long-term health of the employees—without attempting to place these concerns in

any order of priority. The listing of concerns includes:

1. **Uniform Code of Operating Rules—**The association's concerns centered on protecting the integrity of the concept of uniformity and on the adequacy of the rules to address all the safety problems encountered. Specifically, the Canadian Railway Labour Association believed that a revision of the Uniform Code was necessary because of the authority of railroads to issue special instructions that tend to destroy the uniformity of practice intended by the Uniform Code. The association also believed that additional rules might be needed, such as rules to govern movement of insulated track units other than conventional rolling stock. RTC apparently agreed with these concerns and has instituted a review of the Uniform Code. This review is currently taking place under the auspices of the Safety Advisory Committee, with representatives of the three major interest groups participating.

In addition to believing that the Uniform Code was in need of revision, the association also suggested that certain rules in the Uniform Code—notably rules 40-44, which govern requirements for lights in situations involving unattended flagging of trains—were being disregarded by the railroads. Although the association believed that the rules might be appropriately revised, they also believed that they should be adhered to until the revision had taken place.

2. **Dangerous Commodities—**The Canadian Railway Labour Association has suggested that a central computer bank be set up to store coded information about how to handle all existing dangerous commodi-

¹²The points raised were made in a letter from J. F. Walter, Vice Chairman, Canadian Railway Labour Association, to Mr. G. H. Cooper, Executive Director, Railway Transport Committee of the Canadian Transport Commission, dated Jan. 2, 1978. The letter was written subsequent to a meeting between Messrs. Walter and Cooper to discuss Labour's safety concerns and at the invitation of Mr. Cooper.

ties. The association has requested that this suggestion be considered by a technical committee of the Railway Safety Advisory Committee.

3. **Environmental Safety, On-Train Employees**—The association believes that the “on-train” employees should be provided regulations governing heating, lighting, ventilation, and noise control in locomotive cabs and cabooses. They believe further that the adequacy of the working conditions of the “on-train” employees will be guaranteed only after the promulgation of such regulations. In addition, the Association recommended that CTC ensure that the regulations, once developed, be adequately monitored, by augmenting their staff capabilities with the services of the safety and health inspectors available to Labour Canada.
4. **Ditch Lights**—**The association supported a requirement that certain railroads under CTC’s jurisdiction operating on mainline in mountain territory be equipped with ditch lights.** Further, the association believes that ditch lights might be safer at level grade crossings than the revolving lights currently required.¹³ The association is undertaking a study of this matter.
5. **Hearing and Sight Restrictions**—**The association suggested that technology has sufficiently improved today to allow the safe use of hearing aids and contact lenses by employees involved in train operations.** These devices are not currently allowed to be worn. ” In addition, the association suggested to CTC that the railroads be required to maintain career records of visual acuity and audiogram tests so that any loss of hearing or vision might be detected at an early date and protective measures taken.
6. **Tunnel Ventilation**—Labour Canada issued a report in October 1976 in which it

¹³At the present time, Order R-22009 requires CP Rail to install ditch lights on all locomotives used in mainline operation in mountain territory. CN Rail has voluntarily used ditch lights in certain areas and CP Rail intends to install ditch lights voluntarily on all locomotives by the end of 1978.

¹⁴The requirements governing use of hearing aids and contact lenses by employees involved in train operations are contained in General Order 0-9.

stated that tests conducted in tunnels have revealed concentrations of nitrogen dioxide that exceed certain standards of safety. The association has urged that CTC issue regulations that would change the existing requirements.

7. **Minimum Track and Operating Right-of-Way Standards**—**The association believes that the development of such minimal standards should have high priority by CTC.**
8. **Training Standards, Railroad Employees**—The association has taken the position that training programs for employees involved with the movement of trains as well as employees involved with the inspection and maintenance of rolling stock, track, and signals are safety programs. As such, the association believes, the training programs should meet minimum standards set by RTC. Some steps along these lines have been taken; however, the association suggests that RTC should develop a program of apprenticeship training standards for selected railroad crafts. The association also believes that the program should provide a skill certification for the employees.

The unions are also involved in the standards development process for railroad employees under the jurisdiction of the Labour Canada. Labour Canada’s policy is to solicit wide participation in the development of standards. Thus, in the past, the unions have had the opportunity to review drafts of standards and to give their comments to the Department of Labour, along with other interested parties.

A relatively new amendment to the Canadian Labour Code has implications for the relationship between the railroad unions and the Government with regard to safety. This provision is administered by Labour Canada for rail employees under its jurisdiction. The provision affirms the right of any worker to refuse to continue to work in an “imminently dangerous situation.”

¹⁵The association cited approvingly standards drafted by a Working Group of the Advisory Committee called “Guidelines for a Signal Training Program for Signal Construction, Maintenance, and Inspection Personnel.” These standards were approved by the Safety Advisory Committee and RTC in 1976.