CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 69

Heard at Montreal, Monday, May 8th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yardman K.R. Crahart, Winnipeg, for eight hours at yard foreman's pro-rata rate, July 8, 1964.

JOINT STATEMENT OF ISSUE:

On July 8, 1964, self-propelled Crane 50394 moved twelve cars of gravel, two at a time, from track WD4 to adjacent track WD5, Symington Yard, Winnipeg, and unloaded them by means of its clam bucket.

Yardman K.R. Crahart, who was first out on the spare board, submitted a time return claiming eight hours at the yard foreman's pro-rata rate of pay, on the grounds that the Company violated article 4, clause (b) of the collective agreement when it did not have yardmen accompany the cars of gravel from track WD4 to track WD5.

The Company declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) H. C. WALSH	(SGD.) E. K. HOUSE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

H. C. Walsh	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The facts established that the crane involved in this dispute is a self-propelled work machine equipped for on-track operation. That description is applied to construction and maintenance vehicles able to move on the tracks without need for locomotives. This includes piledrivers, tampers, switchbrooms, weed sprayers, mowers and cranes. They are manned by qualified operators who are not represented by the Brotherhood.

On the date in question while this crane was working in the west departure yard of Symington, and not on the main line, it moved twelve cars of gravel from Track WD4 to the track next to it, Track WD5. Twelve cars were moved and unloaded two at a time. After they were unloaded by means of the crane's clam bucket they were left on Track WD5.

The spokesman for the Brotherhood contended the movement of cars by this crane without yardmen, within the switching limits at Symington, is a violation of article 4, clause (b) of the agreement.

The relevant portion of clause (b) is the first paragraph, reading:

> **4(b)** Yardmen will do all transfer, construction, maintenance of way, and work train service exclusively within switching limits, and will be paid yard rates for such service. Switching limits to cover all transfer and industrial work in connection with terminal.

It was contended for the Brotherhood that article 4 of the Yardmen's collective agreement exists for the purpose of defining work to be performed by yardmen. It was claimed the inclusion of the word "all" in this rule supports this position. Dictionary meanings of this word were cited, including "wholly, entirely, completely."

It was claimed that Yardman K. R. Crahart was available and stood first out for work on the yardman's spare board but was not called to perform this work. Therefore, he was run-around by employees other than yardmen who did perform the work.

For the Company it was submitted the purpose of this clause was not to make work for yardmen but to assure that *bona fide* yardmen's work is performed by none other than yardmen.

This was not yardmen's work, was the contention. It was admitted that yardmen in maintenance of way work perform what is called "ground work" connected with the handling of cars involved. This generally consists of accompanying a locomotive used to switch several cars from various locations and marshalling them for unloading, protecting the movement while the cars are being unloaded and moving the cars to another location in the yard when the unloading has been completed. In many such instances the yard movement is in motion during the unloading process.

It was the contention of the Brotherhood that the crane had switched cars and maintenance of way employees had thrown switches in connection with the movement. For the Company it was noted that article 4, clause (b) does not mention switching. From this the Company's representative reasoned that yardmen do not have the sole right to perform all switching exclusively within switching limits. Furthermore, it was stated, the crane in this dispute did not perform switching but simply moved cars from one track to another and unloaded them.

The spokesman for the Company contended crew consist clauses can constitute make work provisions if they stipulate more crew members than the work requires. This was not so with reference to article 4, clause (b). It was claimed to be significant that the only compulsory crew consist clause in this agreement, article 7, clause (a), does not apply to self-propelled machines. The clause provides for a yard crew used with a locomotive and reads:

> **7(a)** A yard crew shall consist of not less than a foreman and two helpers, except where special arrangements are made by the General Superintendent and the General Committee.

That clause, it was urged, applies to *bona fide* yard crews where locomotives are used within switching limits for yard work. It was noted the clause speaks of a "yard crew", not of any crew working in a yard, nor least of all, of a crew assigned to a piece of self-propelled work equipment operating in a yard. It was claimed "yard crew" has traditionally been known to mean the crew of a yard engine.

While it was stated the function of self-propelled work equipment can in most instances be carried on without any crew from the yardmen's ranks, if the Company determines that in the operation of such a machine there is justification for a Yard Foreman/Pilot or a full crew, then such men would be assigned from the ranks of the yardmen.

It was stated that when yardmen are used to accompany self-propelled work machines, it is extremely rare for more than one yardman to be used with a single machine. A yardman so used is known as a Yard Foreman/Pilot and is responsible for the safety of the crew and the machine insofar as Operating Rules and Instructions are concerned and he has control over the machine's track movements. The conditions governing his employment are set forth in article 4, clause (a), reading:

> **4(a)** When pilots are required within yard limits, Yardmen will be used and will receive Foreman's pay. Yardmen will not be used outside of yard limits as pilots.

This provision was considered of significant importance, because of the fact it is only on self-propelled machines that a need for a Yard Foreman/Pilot arises. The use of such an employee with any other equipment would be extremely rare. Yard engines were said to be invariably manned by a yard crew. Locomotives which are not in yard service are moved within switching limits by a locomotive engineer or a hostler without yardmen.

The important part of the foregoing, in the Company's view, are the words "when pilots are required …"

It was noted that the first paragraph of article 4, clause (b) and article 7, clause (a) in their present wording have been in effect since March 15, 1918. Since that time it was claimed self-propelled work machines without yardmen, or with a Yard Foreman-Pilot alone, have moved cars in connection with the work performed.

The Company's representative claimed the action of the Brotherhood in attempting to have included a provision to support their contention indicates their awareness that at the present time it does not exist.

It was said that in renewal negotiations in 1961, this demand was presented:

> Request a uniform crew consist rule for self-propelled machines.

This request was refused. Before the Board of Conciliation the Brotherhood was said to have argued:

> **PROPOSED RULE:**
> When any self-propelled machine is used within switching limits and no cars are handled, a foreman-pilot will be assigned.
>
> When cars are handled by any self-propelled unit, a full crew will be used.
>
> The adoption of this suggested rule would ensure that a qualified pilot or crew would be used in all cases where self-propelled units are used.

The Conciliation Board was said to have refused to recommend acceptance of this demand and the agreement was renewed without any such obligation upon management.

Again in November 1965, the Brotherhood served demands for a new contract which included an item proposing that the parties:

> Establish a crew consist on self-propelled equipment performing any switching or handling of cars.

Proceeding on to the Conciliation Board this request was denied and the agreement renewed with no additional obligation imposed upon the Company respecting the manning of self-propelled work machines.

The significance of such efforts was dealt with by His Honour, Judge J.C. Anderson in an award he issued in a dispute concerning this Company and the Eastern Yardmen's Agreement:

> There is no provision in the collective agreement which makes it compulsory on management to assign a foreman pilot to a tamping machine when used in yards. Obviously, this was the accepted interpretation of the rules by the negotiating committee of the Brotherhood when the Brotherhood requested as part of the negotiations for the 1962 contract a rule which would compel the Company to assign a foreman pilot when any self-propelled machine is used within switching limits and that when cars are handled by any self-propelled unit a full crew will be used.

In **Case No. 24** of the Canadian Railway Office of Arbitration, also concerned with the Trainmen's Eastern Lines Agreement, of significance in considering the time when these clauses were first enacted, 1918, and the advances made since then in new equipment, requiring the effort described to have included in the agreement provisions acknowledging their existence, was this portion of the findings:

> This type of dispute is not uncommon in industry, due to the rapid advance and improvement made in various types of machinery in recent years. Such equipment drops in between existing guide lines represented by job descriptions or classifications and creates confusion until a proper pattern is created for them – not by arbitration, but by negotiation.

After a careful study I am satisfied article 7, clause (a) of the agreement refers to the crew consist of bona fide yard crews when locomotives are used within switching limits for yard work; that further agreement between the parties is required, as has been sought, to enlarge the scope of that provision to include these unusual types of equipment, self-propelled machines, with their own distinctive functions, differing from that type of equipment requiring the traditional crew common to yard engines.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR