

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 137

Heard at Montreal, Tuesday, January 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Yardmen P. Power, W.R. Ronyck, P. Hawryshko and J.R. Smith, Winnipeg, each for eight hours at Yard Helper's pro-rata rate of pay, July 27, 1967.

JOINT STATEMENT OF ISSUE:

On July 27, 1967, a trackmobile was operated two shifts in Fort Rouge Coach Yard, Winnipeg, switching cars within designated trackage. A Yard Foreman was used with the trackmobile on each shift.

Spare Yardmen Power, Ronyck, Hawryshko and Smith each submitted time return claiming eight hours at the Yard Helper's pro-rata rate of pay under the provisions of Article 7, Clause (c) (2) on the grounds that the Company violated Article 7, Clause (a) of the Collective Agreement when it did not use a full crew consisting of one Yard Foreman and two Yard Helpers on each of the two shifts.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) J. S. CORBETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. C. St. Pierre	– Labour Relations Assistant, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal
J. R. Gilman	– Senior Agreements Analyst, Montreal
L. H. Gooding	– Area Manager, Winnipeg
S. Payne	– Labour Relations Officer, Winnipeg

And on behalf of the Brotherhood:

J. S. Corbett	– General Chairman, Winnipeg
R. C. Murdoch	– Secretary, G.G.C., W.L., Winnipeg

AWARD OF THE ARBITRATOR

A trackmobile is a self-propelled machine which may operate either on track or (on rubber tires) on the ground. It is operated by a carman (not represented by the Brotherhood). It may be used in switching operations, and is capable of moving a limited number of cars on track. When it is used in switching operations, it is assigned to operate in a “locked switch area”. At the times in question in this case, a trackmobile was used in switching operations. A yard foreman (more accurately described as a “yard foreman–pilot” as used in the operation. It is the Brotherhood’s contention that a full crew consisting of a yard foreman and two yard helpers should have been used.

Article 7 (a) of the collective agreement provides as follows:

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.

This provision is now superseded to some extent by Article 7 (B) which provides for the agreement of the parties (or arbitration) to a reduced crew consist of one yard foreman and one yard helper where adequate safety can be maintained. This question does not arise in the instant case, Where the fundamental issue is as to the applicability of Article 7 (a). Was a “yard crew” required at all in the circumstances of this case?

It has been determined in previous arbitration cases that self-propelled equipment generally is not subject to Article 7 (a): see **cases No. 24 and 69**, and an earlier award by His Honour Judge J. C. Anderson. In **case No. 69** the arbitrator concluded his award by stating that Article 7 (a) referred to the crew consist of *bona fide* yard crews when locomotives are used within switching limits for yard work. If the scope of the agreement was to be enlarged to accommodate the new types of equipment being used, that was a matter for negotiation between the parties. It was not argued that these previous decisions dealing with what is essentially the safe matter were wrong and in my opinion they should be followed.

If, instead of using a locomotive for yard work the company were to substitute (as here) some other sort of machine for it; and if (as does not appear to be the case here) the new machine were to perform all of the functions and in the same circumstances as a locomotive would have done, then, it seems to me, the work involved would be “yard work” in every sense, and Article 7 (a) would require that a yard crew be used. Here, however, the equipment used is of limited capacity and it is used within a locked-switch area.

I am unable to see any substantial distinction in principle between this case and **case No. 69**, in which a self-propelled crane was used to move gravel cars from one track to another, and it was held that Article 7 (a) did not apply. Certainly there are differences in the equipment involved, but in each of these cases the relevant consideration is that unusual equipment was used as motive power for rolling stock.

It must be noted the Brotherhood has from time to time, given indications that it does not regard article 7 (a) as applying, at least in general, to situations involving the use of self-propelled equipment. Thus, in their most recent request at negotiations, the Brotherhood ask for a rule on trackmobile crew consist to provide that a yard foreman and one yard helper be required on all trackmobiles. Again, in its decision in case No. 786, the **Canadian Railway Board of Adjustment No. 1** ruled that one yard foreman and one yardman was to be the crew consist in respect of the operation of a trackmobile in a particular location. The jurisdiction of the Board of Adjustment was different from that of the arbitrator, but both the ruling and the Brotherhood’s own demands serve to indicate that the general provisions of Article 7 (a) have not been regarded by the parties as applying (subject to the possible qualification referred to above) to the use of self-propelled equipment.

For the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR