

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 203

Heard at Montreal, Tuesday, April 14th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims dated July 24 and 26, 1968, of Conductor C.J. Clarke and crew, Toronto.

JOINT STATEMENT OF ISSUE:

Conductor C.J. Clarke and crew (Brakemen S.J. Gilchrist and R.I. Hewitt) were assigned to wayfreight trains Nos. 570 and 571 operating Toronto to Beaverton and return in turnaround service. On July 24, 1968, while operating train No. 571, they picked up engine 3878 at Doncaster and moved it in their train to Toronto.

For the tour of duty on trains Nos. 570 and 571, July 24, this crew claimed and were paid on a continuous time basis from 0700 hours to 1445 hours (7'45") or 178 miles at wayfreight rates of pay.

In addition, Conductor Clarke and crew submitted time claims each for an extra day's pay of eight hours at yard rates of pay, for July 24. The Company declined payment of the claims and the Union alleges that the company violated the first paragraph of Article 140, Agreement 4.16, when they were required to pick up the engine at Doncaster.

Identical claims were submitted by this crew for the similar handling of engines 3811-3712 (coupled) on July 26, 1968.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. J. DelTorto	- System Labour Relations Officer, Montreal
J. R. Gilman	- Labour Relations Assistant, Montreal
W. D. Connon	- Superintendent Transportation, Capreol
R. W. Greene	- Assistant Superintendent, Toronto
M. DelGreco	- Employee Relations Assistant, Capreol

And on behalf of the Brotherhood:

G. R. Ashman	- General Chairman, Toronto
V. L. Hayter	- Secretary, General Committee, Stratford

AWARD OF THE ARBITRATOR

The first paragraph of Article 140, relied on by the Union, is as follows:

140 YARDMEN'S WORK DEFINED

Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yardmen are employed, be considered as service to which yardmen are entitled, but this is not intended to prevent trainmen from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

In this case, it is argued that the work of picking up diesel unit 3878 at Doncaster and taking it to Toronto constituted "transfer ... work, wholly within the recognized switching limits" at Toronto. If it was such, then the grievance must succeed. It is not suggested that trainmen could perform his work as "switching required in connection with their own train".

It is clear that when Conductor Clarke and crew picked up diesel unit 3878 at Doncaster, they had not reached the terminal at Toronto. From the point of view, as trainmen, they simply picked up a car at a station enroute. In my view, it would make no difference if unit 3878 had been a boxcar rather than a diesel unit. In this connection, there appears to me to be a distinction between this Case and **Case No. 55**. In that case a railiner (a diesel power unit was coupled to an engine and moved from the Winnipeg station to the diesel shop That movement was carried out by a hostler, and a claim for the work was made by yardmen. It was held that this type of movement came within the work traditionally performed by a hostler, and that it did not constitute a "transfer" as the term was used with respect to yardmen's work. While I do not disagree with the decision in that case, it is my view that in the circumstances of the instant case the movement of unit 3878 from Doncaster to Toronto must be regarded as a transfer. The unit was not operative as a power unit, and from the crew's point of view, for purposes such as this, would appear to be simply another piece of rolling stock. In my view this state of things is reflected in the requirement that it be reported in the train journal as a car. It is true that it was coupled to the diesel unit in train No. 571, and became part of the engine consist in charge of the engineer, who was paid accordingly. It was not, however a source of motive power for the train. Its location in the train, or its effect on the responsibility of others, does not affect the fact that this was a transfer of a piece of equipment, not under its own power, from Doncaster to Toronto.

Was it then a transfer wholly within the switching limits? It seems clear that it was. Doncaster is within the switching limits of Toronto. Doncaster is not within the terminal of Toronto. **Case No. 64**, referred to by the company, is not helpful, because the issue there was whether the crew should be considered to have reached the Capreol terminal when they entered the siding at Suez, some 2.7 miles from the main track switch to Capreol yard. In this case it is clear that unit 3878 was picked up before the Toronto terminal was reached, but at the same time it must be said that it was picked up within the Toronto switching limits.

Article 10 of the collective agreement contemplates trains picking up or setting out cars at terminals where there is a series of yards. It is doubtful if the provisions of that article permit transfers of cars unconnected with a crew's own train, any more than Article 140 does. In any event it refers to certain circumstances "at terminals". In the instant case the work was not performed at a terminal. It was performed within the switching limits at Toronto, and, under the terms of the collective agreement, it seems clear that it was yardmen's work. Accordingly, the grievance must be allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR