CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY TO CASE NO. 203

Heard at Montreal, Tuesday, December 8th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Toronto
M. A. Matheson	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The award in this matter, issued earlier, was, in its operative portion, that "the grievance must be allowed". The dispute was over claims dated July 24 and July 26, 1968, filed by conductor C.J. Clarke and crew for an extra day's pay of eight hours at yard rates for each of the days mentioned. The issue which was dealt with in the award was whether the work performed by the crew in question on those dates was yard work, and it was held that it was. The issue of the relief to which they were entitled was not expressly dealt with in the award, although it may be said that the effect of the award, on its face, would be that the grievors were entitled to the relief asked. They claimed eight hours' pay, and their grievance was allowed.

Nevertheless, a question has been raised as to the relief to which the grievors are entitled pursuant to the award. The company is prepared to pay the grievors at yard rates for the time actually spent in performing what was determined to be yard work, but has refused to pay the full claim of eight hours' pay.

The collective agreement draws a clear distinction between yard crews and road crews, both as to their payment and as to the nature of their work and working conditions. There are occasions when road crews may properly perform yardmen's work, and on these occasions they are paid in accordance with article 35 of the collective agreement, which provides as follows:

> Trainmen relieving yardmen; or performing yardmen's work, as defined in Article 140, at points where yardmen are employed, will be paid yardmen's rates and overtime conditions.

Articles 91 to 147 set out rates of pay and regulations relating to yardmen, and these would not generally apply to the grievors, who are in road service. For the work in question, however, which was properly that of yardmen, they are entitled to the appropriate payment for work performed in that capacity. It should be added that any payment to which they are entitled could not properly be assessed as a penalty, however the parties might regard it. The grievors did perform certain yard work, and the only question is what they are entitled to be paid for it.

The union's contention is that they should be paid a minimum day; the company's contention is that they should be paid at yard rates only for the precise time when they could be said to be performing yard work. Had yardmen been called to perform the work, as would have been proper, then of course, a minimum day would be paid. The grievors did do work which had they been yardmen, would have entitled them to such payment. This was not done in the course of their own day's work, or as ancillary thereto as has been the case in other instances) but was a day's work in a separate class of service. In my view, they were entitled to payment accordingly, that is, payment for a minimum day.

It was argued by the company that the reference in article 35 to "yardmen's rates and overtime conditions" was a reference only to the provisions of article 91, which sets out rates of pay for yardmen, and article 93, which deals with overtime. Certainly the grievors did not lose their general status as roadmen, and the mere fact of their being improperly directed to perform yardmen's work on the occasions in question would not entitle them to the benefit of the yardmen's provisions generally. This is not to say, however, that they should be deprived of the payment in respect of those days' work to which yardmen would have been entitled. That such payment is to be made is, in my view, the import of article 35. The rights of yardmen to claim in respect of lost work are, of course, unaffected by this claim by the roadmen.

In **Case No. 145**, claims were made by firemen//helpers who were promoted, within the course of a continuous tour of duty, to be enginemen, and who sought to be paid at least a minimum day for each capacity in which they worked. The grievance was dismissed, it being pointed out that the collective agreement contemplated that the promotion of firemen/helpers to engineers might be made in the course of a continuous tour of duty. There was no provision for "automatic release" and it could not be said that the grievors served two tours of duty. In the instant case, the collective agreement definitely did not contemplate the improper assignment of yardmen's work to trainmen. The yardmen's work which the grievors were directed to do might indeed have been a day's work for a yard crew, and they are entitled to be paid on that basis. Similarly, there is provision in article 16 of the collective agreement for cases where trainmen perform more than one class of road service in a trip. This was not such a case, but was rather an instance of performance of work intended to be assigned exclusively to others. It must, in my view, be regarded as a separate day's work.

Accordingly, it is my conclusion, having regard to the particular circumstances of this case, and the language of this collective agreement, that the grievors were entitled to be paid for a minimum day in respect of their performance of yardmen's work on July 24 and July 26, 1968, and I so award.

(signed) J. F. W. WEATHERILL
ARBITRATOR