CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 211

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor W.B. Petrie and crew, Windsor, August 22, 1968.

JOINT STATEMENT OF ISSUE:

On August 22, 1968, Conductor W.B. Petrie and crew (Brakemen W. R. Collier and R. D. Kennedy) operated their assigned train No. 728, Windsor to London. The consist of train No. 728 included two cars of Company material (stone) which, according to instructions, were to be unloaded enroute from Jefferson Avenue to L'Esperance Road, this latter road being beyond the switching limits of Windsor Yard. However, the two cars were empty when they reached Lauzon Road, which is within the switching limits of Windsor Yard, and were hauled by this train through to their destination.

For service performed on train No. 728, Conductor Petrie and crew claimed and were paid on a continuous time basis from 1030 hours to 1655 hours, that is, 141 miles at wayfreight rates of pay. In addition, these employees submitted time return each claiming an extra day's pay at yard rates of pay on the grounds that the second paragraph of Article 140, Agreement 4.16 had been violated by the Company alleging that work train service was performed within switching limits from 1225 hours to 1300 hours.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. R. ASHMAN	**(SGD.) K. L. CRUMP**
GENERAL CHAIRMAN	**ASSISTANT VICE-PRESIDENT LABOUR RELATIONS**

There appeared on behalf of the Company:

A. J. Del Torto	– Systems Labour Relations Officer, Montreal
W. D. Connon	– Superintendent Transportation, Capreol
M. DelGreco	– Employee Relations Assistant, Capreol
C. F. Wilson	– Labour Relations Assistant, Montreal
J. E. Garrity	– Trainmaster/Road Foreman, Windsor

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

It is stated that the company had issued instructions that stone was to be unloaded en route from Jefferson Avenue (which is within the switching limits of Windsor Yard) and L'Esperance Road, which is outside the switching limits. Had these instructions been complied with, then it is acknowledged there would be no claim. In fact, however, the work of unloading the stone was performed wholly within the switching limits of Windsor Yard.

Article 140 of the collective agreement, relied on by the union, is as follows:

> **ARTICLE 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.
>
> At points where yardmen are employed and a spare list of yardmen or a joint spare list from which yardmen are drawn is maintained, yardmen will, if available, handle work, wreck, construction, snow plow and flanging service other than that performed continuous with a road trip in such service, and be paid at yard rates and under yard conditions.

It is argued that the work of unloading stone in the circumstances described, was exclusively yardmen's work, since it was performed entirely within the switching limits. The work was not "performed continuous with a road trip" in work service, because the crew in question was in regular freight service. If the work in question had been performed outside the switching limits, then article 18 would apply. That article provides in part as follows:

> **18** Trainmen on trains specified in Article 8, Clause (a) except work, wreck and construction, required to load or unload way freight or Company's material, … will (unless through freight basis including overtime for the trip amounts to more) be paid at wayfreight rates for time so occupied, …

The issue in this case is simply whether the crew was required to perform the work train service of yardmen. If so, they would be entitled to succeed in their grievance and would, in my view, be entitled to the minimum day claimed, although it is not necessary to make any final determination of that matter in this case. In the instant case, if the grievors had been assigned to carry out the work in question as it was performed – that is, wholly within yard limits – then, as I have indicated, they would be entitled to succeed. This was not, however, their assignment. Their instructions, as set out in the joint statement of issue, were that the stone was to be unloaded from a point within the switching limits up to a point beyond the switching limits. If it had been possible to carry out these instructions, then admittedly the claim would not succeed. The union acknowledged at the hearing that if the company's assertion that it had been intended some of the stone within the limits and some outside the limits, then the claim could not succeed. This assertion is contained in the joint statement of issue and in my view must be accepted for purposes of this case. It may be that the instructions as to the unloading of the stone were given verbally, which could lead to difficult questions of proof. It is conceivable that the instructions were in fact to unload all of the stone within the switching limits, and that dishonest statements have been made in order to deprive the grievors (as well as a yard crew) of their proper entitlements. Such an allegation does not appear in the claim, and while implicit in certain of the union arguments (which suggest some doubt as to the actual instructions), is not a proper subject for determination in light of the circumstances as set out in the joint statement of issue.

In **Case No. 203** a crew was instructed to perform certain work which, it was held, constituted transfer work wholly within certain switching limits and which was therefore yardmen's work. In the instant case the assigned work was not yardmen's work, and it was only due to a failure or inability to carry out the assignment that yardmen's work happened to be performed. For these reasons, therefore, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR