

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 227

Heard at Montreal, Tuesday, July 14, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Eight claims of spare yardmen, at Fort Erie, for various dates during February and March, 1969.

JOINT STATEMENT OF ISSUE:

On February 2, 1969, Yard Foreman R. Leonard and Yard Helpers A.J. Sroka and W.L. Gambacourt worked the 6700–1500 hours regular transfer assignment between Fort Erie, Ontario and Black Rock, N.Y. In accordance with Company's instructions one member of this yard crew rode in the cab of the engine during the time the assignment operated on trackage within the State of New York.

Yard Helper R.S. Carter, who was assigned to the spare board, at Fort Erie, submitted a claim for loss of earnings in the amount of a day's pay of eight hours at the yard helper's straight time rate alleging that he was entitled to work as third yard helper on the transfer assignment while it was operated on trackage within the State of New York. The Company declined payment of the claim and the Union contends that in failing to provide a third yard helper on the transfer assignment for the period it operated in New York State the Company violated Article 135 of Agreement 4.16.

Seven similar claims were submitted by various spare yard helpers between February 5th and March 19th, 1969. These claims were also declined by the Company.

FOR THE EMPLOYEES:

**(SGD.) G. E. MCLELLAN
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
L. W. Metcalf	– Trainmaster/Road Foreman, Black Rock, N.Y.

And on behalf of the Brotherhood:

G. E. McLellan	– Assistant General Chairman, Toronto
C. G. Reid	– Vice-General Chairman, Hamilton

AWARD OF THE ARBITRATOR

It is the Union's contention that while one member of the yard crew was riding, in accordance with instructions, in the cab of the engine the yard crew was thereby depleted, and a spare man was entitled to be called. If in fact the yard crew was depleted by the action of the Company in assigning a member of the crew to other duties, then it would seem that such a grievance would be well founded. In the instant case, however, it appears that the member of the yard crew riding in the cab did not lose his status or responsibilities as a member of the yard crew, although given a specific, and somewhat unusual directive as to his placement.

The Company has issued a general direction that a member of the yard crew must ride in the cab of the engine where work is performed in New York State. This direction was given in order to comply with certain requirements of operation in that jurisdiction. The direction is general in nature, although it may go beyond what is strictly necessary in certain cases. Where there is a fireman on duty in the cab. It does not appear, however, that the yardman, when directed to ride in the cab, is in any sense acting as a fireman. He may quite properly give and receive signals and carry out his duties as a yardman, limited though he may be by the requirement of riding in the cab.

It is possible that in some circumstances the yard crew would be hindered in its duties by reason of the location of one of its members in the cab of the engine, although no such circumstances were referred to in this case. If this were to happen, the crew could of course do no more than carry out its job in conformity with the Uniform Code of Operating Rules. There is nothing in the circumstances of this particular case to lend weight to Union fears that the Company might reduce yard crew sizes contrary to any material provision of the collective agreement. On the facts of this case, yard crew size has not been reduced. It is rather a case of specific directive as to placement of a member of the crew. Whether this satisfies the requirements of New York law is of course not an issue before me.

In the circumstances, there was no entitlement of a spare man to be called, as a full crew was utilized. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR