

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 406

Heard at Montreal, Tuesday, April 10th, 1973

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

### DISPUTE:

Right of Yardmen to work with trackmobile within the confines of the Ogden Repair Shop Complex at Calgary and right of Yardmasters to continue to be employed to supervise such Yardmen.

### JOINT STATEMENT OF ISSUE:

On September 28th, 1972 the Company, pursuant to the provisions of Article 26, of the Yard Rules and Article 15 of the Yardmasters' Collective Agreement, notified the General Chairman, UTU(T) of its intention to handle cars within the confines of the Ogden Repair Shop Complex at Calgary by use of a trackmobile manned by Shop staff employees with the resultant abolishment of one yard crew and one Yardmaster.

The Union alleges that the Articles pertaining to yardmen as contained in the Collective Agreement bestow upon that class of employees the exclusive right to perform the placement of cars when such is done by use of a trackmobile and that Yardmasters have the right to supervise the yard crew when working within the Ogden Complex.

It is the position of the Company that the Collective Agreement provisions pertaining to yardmen apply only to yard crews working in conjunction with a yard engine and that inasmuch as the Collective Agreement does not contain a scope rule defining yardmen's work nor a rule providing for a crew consist of self-propelled equipment, employees other than yardmen may be used to handle cars by the use of a trackmobile. In respect of Yardmasters, it is the Company's position that the Collective Agreement does not contain any rule requiring the employment of Yardmasters.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) R. T. O'BRIEN (SGD.) J. D. BROMLEY

GENERAL Chairman GENERAL MANAGER, Operation & Maintenance, PACIFIC REGION

There appeared on behalf of the Company:

L. J. Masur – Supervisor Labour Relations, Vancouver

J. Ramage – Special Representative, Montreal

E. G. A. Abbot – Assistant Manager, Labour Relations, Montreal

D. G. Stewart – Superintendent, Calgary

A. G. Vulcano – Works Manager, Ogden, Calgary

And on behalf of the Brotherhood:

R. T. O'Brien – General Chairman, Calgary

P. P. Burke – Vice-General Chairman, Calgary

## AWARD OF THE ARBITRATOR

The articles referred to in the Joint Statement of Issue deal with "Material Changes in Working Conditions". The changes now proposed by the Company will result in the separating off of certain work formerly performed by yardmen and yard foremen and its performance by members of another bargaining unit, using different equipment. If the proposed changes are ones which it is open to the Company to make, then negotiations are called for, but the matters there in issue do not arise in this case. Here, the question is one of the propriety of the Company's making the proposed changes in assignment.

It seems clear that the work in question could be performed by Yardmen and supervised by yardmasters. The question is whether any provision in the collective agreement grants these employees the exclusive right to perform such work for the Company. The agreement contains no such express provision. The assignment of work to members of another bargaining unit is, as far as the persons now doing the work are concerned, the equivalent of a contracting out of the work. Where, however, there is no doubt as to the work's being done by "employees", then the only question is whether the performance of the work brings those who do it within the scope of the collective agreement; and thus obliges the Company to comply with provisions of the agreement relating thereto.

The collective agreement does not set out any definition of yardmen or yardmasters. This is not to say that those terms are not capable of definition. Generally speaking, it is surely true that the parties know very well which of their employees come under the collective agreements in question. Where the Company assigns an employee to carry out a set of tasks typical of those of a yardman or yardmaster, then that person must be said to be a yardman or yardmaster and subject to the appropriate agreement, and the Company bound by that agreement with respect to the assignment of the employee.

In the instant case the work which the Company proposes to assign to Shop employees is work which has in the past been performed by yard employee using an engine. The Company proposes to assign it to shop employees using a Trackmobile. I think, speaking generally, that the overall nature of the work is a more important consideration than the equipment used to perform it. Thus, if the Company were simply to replace all its yard engines with trackmobiles, I would not necessarily follow that there were no more yardmen.

The work in question here, however, consists only of a portion of the work performed by yardmen: the distribution of cars and locomotives left on shop tracks to the appropriate repair facility. This work is to be performed within the shop area to which access, by a single track, is controlled. Certain movements of rolling stock by means of trackmobiles has been carried on by shop employees at other locations and is, I think, within the scope of the work of such employees.

There is, in this limited area, a certain overlap between the work which might be performed by shop employees and that performed by yardmen. By the same token, it should be noted that while yardmen line switches, not all those who line switches are yardmen: this aspect of a yardman's job may also constitute the work of a switchtender, and indeed may fall within the scope of other classifications as well.

The matter of the use of a trackmobile for certain switching movements was considered in **Case No. 137**, although that case involved a different collective agreement than the one now before me. There, as here, the trackmobile as used in a "locked switch area", and it was held that its use did not call for the staffing required by the yardmen's agreement. In the instant case, as in case **No. 137**, it would be my view that if a trackmobile were to be used to perform all of the functions and in the same circumstances as a locomotive would have one, then the work involved would be "yard work" in every sense. Here, however as in **Case No. 137**, limited capacity equipment is used, and it is used in a locked-switch area. Indeed, the work for which a trackmobile is used is shop work in which it appears such equipment has been used in other locations, so that the instant case would seem to be a stronger one.

The control of movements on the shop tracks, and of the switch governing access thereto, is to be in the hands of the Ogden Planner. For reasons similar to those which apply in the case of yardmen, it is my conclusion that this aspect of a yardmaster's work is not exclusive to yardmasters but may properly be assigned to other classifications.

For all of the foregoing reasons it must be my conclusion that yardmen do not have an exclusive right to work with trackmobiles within the confines of the Ogden Repair Shop at Calgary and that yardmasters do not have the exclusive right to supervise such work. The grievance must therefore be dismissed.

**(signed) J. F. W. WEATHERILL**

**ARBITRATOR**