CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 566

Heard at Montreal, Wednesday, October 13, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim submitted by Locomotive Engineer R.R. Turner for difference between through freight rates and yard rates for services performed at Simcoe, Ontario, 17, 18 and 19 June, 1975.

JOINT STATEMENT OF ISSUE:

On June 17, 18 and 19, 1975, Locomotive Engineer R.R. Turner of Hamilton was assigned to work train service within the confines of Simcoe Yard. The Company compensated the employee at through freight rates in accordance with the provisions of Article 27 of the Collective Agreement.

The Brotherhood's contention is that the employee should have been paid at yard rates.

The Company's position is that the employee was properly paid and the claim for yard rates has been declined.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) V. J. DOWNEY	**(Sgd.) S. T. COOKE**
ACTING GENERAL CHAIRMAN	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

G. A. Carra	– System Labour Relations Officer, Montreal
W. J. Rupert	– Regional Rules Supervisor, Toronto

And on behalf of the Brotherhood:

J. B. Adair	– General Chairman, St. Thomas

AWARD OF THE ARBITRATOR

Article 27 of the collective agreement provides, in its material portion, as follows:

> **Article 27– Work Train Service**
>
> **27.1** The following Freight Service Articles apply to Work Train Service:
>
> Article 14 – Rates of Pay, Paragraph 14.1
> Article 15 – Basic Day, Paragraph 15.1
> Article 16 – Called for Straight-Away or Turn-Around Service, Paragraph 16.2
> Article 17 – Overtime, Paragraphs 17.2, 17.3, 17.4 and 17.5
> Article 18 – Preparatory Time
> Article 23 – Inspection Time, except as provided in paragraph 27.2.

Since the grievor was assigned to work train service, he was paid at freight service rates in accordance with article 14, as contemplated by article 27.

The union's contention is that article 27 does not apply in this case, since the work was performed within the confines of Simcoe Yard. Thus, it is said, the matter is governed by article 42-A, and in particular by article 42A.2, which is as follows:

> **Working Within Switching Limits**
>
> **42A.2** Yard rates and conditions will apply to locomotive engineers in work, construction, auxiliary, snow plow, snow spreader or flanger service for a yard tour of duty which is not continuous with road service.

The grievor's work on the days in question was within the yard limits of Simcoe Yard. Although, since he was assigned to work train service, the general provisions of article 27 would apply, he was assigned to this work within Simcoe Yard, and for that reason the union contends that the more specific provisions of article 42A.2 should apply. These specific provisions would have precedence of the more general provisions of article 27, in a proper case. The question is, then, whether this case is such: that is, was the grievor's service performed "for a yard tour of duty which is not continuous with road service"? There is no suggestion that service continuous with road service was involved. It remains to be determined whether or not the grievor was assigned to a "yard tour of duty" within the meaning of article 42A.2.

It seems clear that article 42A.2 does contemplate situations where, notwithstanding the generality of article 27, engineers in work service will be paid at yard rates. The article is headed "Working Within Switching Limits". The designation of switching limits is provided for in article 42A.1 as follows:

> **42A.1** Present switching limits will be designated by general notice at all points where yard engines are assigned, and will only be changed as necessitated by industrial activities and territorial extension of facilities. Copy of such notice will be forwarded to the General Chairman.

It is the company's submission that a "yard tour of duty" within the meaning of article 42A.2 means a tour of duty in a yard when yard engines are employed and where switching limits have been established. It is the existence of switching limits, it is said, which is the significant and deciding factor in the determination of rates of pay and conditions as between road and yard service. The company argues that where "where there are no yard engines employed at a location and therefore no switching limits designated", the rules relative to yard and transfer service do not apply and all work performed would be governed by the road service rules. It may be noted that, in any event, the work performed by the grievor was work service, not continuous with road service, and all within Simcoe Yard.

It was stated by the company that there was no yard engine employed at Simcoe, nor were any switching limits defined. While it seems to be acknowledged that there was no yard engine at Simcoe at the material times, the union states that there had been one in the past, that switching limits had been designated, and that these had never been changed, or at least not until after this grievance arose. The work in question was thus performed within certain designated switching limits, even if these no longer served their original purpose. The company does not deny that there had once been such limits.

However all this may be, and whatever might be the case where yard switching, or yard service as such is performed, the provisions of article 42A.2 deal with a special case: where work which might not otherwise be yard service is nevertheless to be paid for at yard rates. The criteria are that the work be one of the types referred to (as here, work service) and that it be performed in "a yard tour of duty – not continuous with road service". Here, the tour of duty was performed within Simcoe Yard, and was not continuous with road service. In my view, the plain meaning of these words cannot be avoided. The tour of duty was a "yard tour of duty" within the meaning of article 42A.2. It was a tour of duty within a yard, and the work was done within the geographical area contained by switching limits which had once defined it even if, as I have noted, they no longer served their original purpose.

It must be concluded, then, that the work in question was covered by the special provisions of article 42A.2, and was payable at yard rates. The grievance is therefore allowed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR