CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 594

Heard at Montreal, Tuesday, February 8, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Claim of Conductor J.L. Riddell and crew, Calgary, for a day's pay of eight hours at yard rates when required to perform switching service on arrival at Field, B.C., December 22, 1975.

EMPLOYEES' STATEMENT OF ISSUE:

Field is an away-from-home terminal which is common to crews from Calgary operating via the Laggan Subdivision and crews from Revelstoke operating via the Mountain Subdivision. It is also a terminal for which crews on the B.C. Seniority District, including Revelstoke, hold yard rights under Yard Rules.

On December 21, 1975, Conductor Riddell and crew, an unassigned crew, were called at Calgary for 2015 for a trip to Field. On arrival at Field at 0510, December 22, Conductor Riddell and crew were instructed to lift a car of fuel oil from Track 10 in the Field yard and spot it for unloading in the fuel track. Conductor Riddell submitted a claim for his trip Calgary to Field and in addition, submitted a claim for a day's pay of eight hours at the yard rate for performing yard work.

The Company, in declining the claim, stated that Conductor Riddell and crew were properly required to perform switching service on arrival at the final terminal in accordance with Article 11, Clause (h) of the Agreement, which provides in part:

> ... If switching is performed, not less than three of a crew will be on duty and will be paid final terminal time for all time so used.

The Union contends that final terminal switching may only include service incidental to the trip just completed in accordance with the provision of Article 11, Clause (h), which states in part as follows:

> ... Members of train crews may be required after train has been yarded at the objective terminal to render individually any service required incidental to the trip just completed. When any member of the crew is used individually, the balance of the crew will be relieved from all responsibility and the man used to perform this service will be paid his regular rate in the class of service employed for all time occupied if held in excess of 15 minutes. If switching is required, not less than three of the crew will be on duty and will be paid final terminal time for all time so used, computed from the time of arrival at the outer main track switch or designated point where road service ends. Switching does not include taking locomotive or self-propelled equipment to the shop or tie-up track.

The Union further contends that the work performed at Field was not service incidental to the trip just completed and, therefore, can only be categorized as yard switching. As yard work at Field is work to which B. C. Seniority

District crews are entitled, and is payable under yard rates and conditions, the Union contends that Conductor Riddell and crew, an Alberta Seniority District crew, are entitled to a day's pay of eight hours at the yard rate.

FOR THE EMPLOYEES:

(SGD.) P. P. BURKE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. T. Sparrow	– Manager, Labour Relations, Montreal
L. J. Masur	– Supervisor Labour Relations, Vancouver

And on behalf of the Union:

P. P. Burke	– General Chairman, Calgary
J. McLeod	– Vice General Chairman, Calgary

AWARD OF THE ARBITRATOR

The issue in this case, in my view, is not whether the grievors were properly required to perform "yard work" at Field. This is, indeed, an issue with which the parties may be concerned, but it is not one which need be decided in order to deal with the grievance before me. It may be that the work should not have been assigned to a Calgary crew, and that a crew from the B.C. Seniority district would have been entitled to it. A claim by such a crew would be the subject of another grievance, and would require a ruling on the question of their entitlement to the work. Such a claim, however, is not before me in the instant case.

The fact is that the grievors were directed to perform certain switching, not incidental to the trip just completed. The question is whether they were therefore entitled to eight hours' payment at yard rates. The work they performed seems to have been, in general, what would come within the scope of "yard work" under some other collective agreements, and it may be that under such agreements, this grievance would succeed. "Yard work", however, is not defined in this collective agreement, and the question before me is as to the sort of payment to which the grievors would be entitled under this collective agreement for the work in question.

The claim is made under Article 11(h) of the collective agreement, which provides as follows:

> **11(h) – Final Terminal**
>
> Trainmen will be paid final terminal time, including switching, on the minute basis at 12.5 miles per hour at rate of class of service performed from the time locomotive reaches outer main track switch or designated point at final terminal; should train be delayed at or inside semaphore or yard limit board, for any reason, or behind another train similarly delayed, time shall be computed from the time train reached that point until the train is yarded.
>
> Members of train crews may be required after train has been yarded at the objective terminal to render individually any service required incidental to the trip just completed. When any member of the crew is used individually, the balance of the crew will be relieved from all responsibility and the man used to perform this service will be paid his regular rate in the class of service employed for all time occupied if held in excess of 15 minutes. If switching is required, not less than three of the crew will be on duty and will be paid final terminal time for all time so used, computed from the time of arrival at the outer main track switch or designated point where road service ends. Switching does not include taking locomotive or self-propelled equipment to the shop or tie-up track.
>
> When trainmen are held for any other service, they will be entitled to all time held computed from the time train is yarded.
>
> It is understood the train is not considered yarded until it has been secured. Final terminal time, except time occupied in switching, will be used to make up a minimum day.
>
> Trainmen used individually for service at the final terminal will submit their own wages ticket.

Time paid for under this Clause (h) will not be included when computing overtime.

The article deals generally with payment for work performed by a train crew after arrival at a final terminal. The first paragraph of the article provides for payment on a minute basis, at 12.5 miles per hour at the rate of the class of service performed, and goes on to describe the point as of which such payment is to commence. It would appear to be common ground that the grievors were, at the very least, entitled to payment for the work in question in accordance with that provision.

Paragraph two of Article 11(h) provides, as I read it, that a member or members of a train crew may, upon arrival at a final terminal, be required to perform work "incidental to the trip just completed". There is relief from responsibility for other crew members where persons are used individually, and there is a qualification as to the number of persons to be used if switching is required. These qualifications would certainly apply to switching "incidental to the trip just completed", but I doubt if it would be limited thereto so as to permit switching by a smaller crew in other circumstances.

The third paragraph of Article 11(h) deals with payment where trainmen are held "for any other service". The remaining paragraphs are in the nature of definitions, or are of a procedural nature and do not substantially affect the question in this case.

In my view, the work performed by the grievor's crew did not come within the scope of the second paragraph of Article 11(h). It was "switching", but it was not "incidental to the trip just completed" which is the sort of work with which the second paragraph generally deals. The work in this case was "other service", and that is dealt with in the third paragraph of Article 11(h). The fact is that that article, in this particular collective agreement, does contemplate that trainmen arriving at a final terminal may perform "other service" after yarding their train. The nature of this service is not limited by anything in any of the paragraphs of Article 11, nor was I referred to any other provision in the collective agreement which would limit what might be done. The third paragraph of Article 11(h) simply provides for the computation of the time from which such "other service", whatever it might be, is payable.

In the instant case the grievors did perform "other service", not incidental to their trip. They were entitled to payment for "all time held", in accordance with the third paragraph of Article 11(h). I was not referred to any provision of this collective agreement by which they would be entitled to eight hours' pay. Accordingly, there does not appear to be any basis on which the grievance could be allowed. It is, therefore, dismissed.

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