CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1330

Heard at Montreal, Tuesday, February 12, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yard Helper A. Purenne, Montreal, Quebec, dated July 17, 1982 for 8 hours at Yard Helpers rate of pay.

JOINT STATEMENT OF ISSUE:

At approximately 1330 hours July 17, 1982, 8 coupled locomotives were moved by an Engine Hostler from the Taschereau Diesel Shop to Track Y01 Taschereau Yard.

In the course of the movement, the Locomotive Attendant (represented by the C.B.R.T. & G.W.) who accompanied the movement turned several switches and gave signals to the Engine Hostler.

Yardman A. Purenne assigned to the yard spareboard, submitted a time claim for 8 hours at Yard Helpers rate of pay.

The Union claimed a violation of Article 41 of Agreement 4.16, stating that the movement should have been accompanied by a Yard Helper.

The Company declined payment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) C. CLEMENT	(SGD.) D. C. FRALEIGH
FOR: GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

D. W. Coughlin	– Manager Labour Relations, Montreal
J. B. Bart	– Labour Relations Officer, Montreal
J. A. Sebesta	– Coordinator Transportation, Montreal
P. J. Thivierge	– Manager Labour Relations, Montreal
C. St. Cyr	– Labour Relations Assistant, Montreal
P. Marleau	– Regional Coordinator - Crews, Montreal

And on behalf of the Union:

W. G. Scarrow	– General Chairman, Sarnia
C. Clement	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The issue raised in this case is not unprecedented. The succinct question raised is "when does work performed by employees who are not UTU members impinge upon the work jurisdiction of UTU bargaining unit employees"? Article 41.1 of Agreement 4.16 affords UTU employees protection against incursion of their work jurisdiction as defined in that provision:

> **41.1** Switching, transfer and industrial work, wholly within the recognized switching limited, will at points where yardmen are employed, be considered as service to which yardmen are entitled, but this is not intended to prevent employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

CROA Case #55 clearly found that the work of "transferring diesel units from shop to yard or from yard to shop is hostler work. As such it did not constitute yardman's work that is the exclusive preserve of the UTU bargaining unit. Yet, hostler work plainly involves switching and transferring wholly within the switching limits of a yard.

Based on past practice as reflected in the work jurisdiction definitions contained in other collective agreements hostler work involves tasks that are not peculiar to the UTU bargaining unit. Thus, when, as in this case, a locomotive attendant who is a member of the CBRT&GW bargaining unit, performs helper's duties to the hostler assigned to transfer diesel units from the Taschereau Shop to the Taschereau Yard such work is recognized as legitimate CBRT&GW work under Agreement 5.1:

> **28.4** Employees used to:
>
> **(a)** move locomotives,
>
> **(b)** accompany a locomotive moving equipment on shop tracks, (c) move locomotives beyond the recognized shop track switch, will be compensated for the actual time so occupied at the following rates per hour respectively;

The UTU now claims that what appears to be an exception to its allegedly exclusive work jurisdiction should be treated henceforth as yardmen's work. And its main support for this claim is the notion derived from other CROA precedents that the hostler work in question required the movement of the diesel units "outside the confines of a locked-switch area". In this regard, the hostler functions performed involved the transfer of the diesel units 400' beyond the limits that would otherwise be permitted a hostler employee who normally is assigned shop work tasks. So long as said employee remained inside "the locked- switch area" and irrespective of the amount of hostler work performed the UTU concedes he would not be impinging upon yardmen's duties.

Of course, the CROA precedents (**CROA Case #137, #240, #406**) in which this notion developed pertained to the introduction of new operational techniques and machinery into the work place. In attempting to establish criteria that might accurately distinguish yard duties from other bargaining unit work one factor the Arbitrator obviously considered is the notion of movement "outside the confines of the lock-switched area" This factor, however, was not intended to be dispositive of whether the disputed work is yardmen's work. Rather the more meaningful test, as outlined in **CROA Case #406**, was expressed as follows:

> I think speaking generally, that the overall nature of the work is more important consideration than the equipment used to perform it

Since **CROA Case #55** definitively established hostler work of the nature herein described was not yardman's work I cannot discern how the distinction presently advanced by the trade union alters the conclusion reached in that case. The simple fact is that not all work ostensibly defined in Article 41 of Agreement 4.16 is necessarily exclusive to the jurisdiction of the UTU where a past practice to the contrary has been recognized in the work definitions contained in other collective agreement In this particular case, hostler work is not only defined as appropriate t the UTU agreement but is referred to in the CBRT&GW and BLE agreements as well.

For all the foregoing reasons the trade union's claim as requested in the Joint Statement of Issue must be dismissed.

(signed) DAVID H. KATES
ARBITRATOR