CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1346

Heard at Montreal, Tuesday, April 9, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor B.D. Ayerst and crew of Capreol, Ontario, dated December 29, 1982, for a basic day at yard rates.

JOINT STATEMENT OF ISSUE:

On December 29, 1982, Conductor Ayerst and crew were ordered in road service to man Train 375 from South Parry to Capreol. Prior to leaving South Parry, the crew was required to lift rail car UTLX 98397 from Track SA-37 in South Parry Yard and place it in Track SA-80 on the Parry Sound Industrial Spur. After this task had been performed, Train 375 left South Parry.

For performance of this particular work, and in addition to wages for the tour of duty on Train 375, Conductor Ayerst and crew claimed a basic day at yard rates pursuant to the provisions of Articles 9.9 and 41.1 of Agreement 4.16.

The Company declined payment of the basic day at yard rates and, in lieu thereof, allowed the grievors 35 minutes (7 miles) at the through-freight rate of pay which was included in the Initial Terminal Time segment of their wages for the tour of duty on Train 375.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) TOM HODGES	(SGD.) M. DELGRECO
FOR: GENERAL CHAIRMAN	FOR: 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

And on behalf of the Union:

R. A. Bennett – General Chairman, Toronto
M. Hone – Research Director, Ottawa

AWARD OF THE ARBITRATOR

The issue raised in this case may be resolved on the basis of the **CROA** precedents in **#1124** and **#1139**. Those cases establish the proposition that the company is entitled to require, where an appropriate yard service employee is not employed, a road service employee to perform "additional work" unrelated to his regular road duties provided the appropriate rate is paid for that task. In the circumstance where such "additional work" is discharged as an incident to the employees' regular call the employer is shielded from paying the premium contemplated "for extra

service" pursuant to Article 9.9 of Agreement 4.16, even though such work is not associated with the performance of the regular functions pertaining to his job call. The pivotal notion expressed in those CROA precedents suggest that when an employee is required to perform "additional work" in the circumstances described he has not been made the subject of a separate and distinct job call for extra service as contemplated by Article 9.9. That provision reads as follows:

> **9.9** Employees called for extra service (not including special service or switching required in connection with their own train or regular assignment) before commencing or after completion of their trip or regular assignment will be paid for such extra service not less than a minimum day at the rate of pay and under the conditions applicable to service performed. (emphasis added)

Based on the interpretations given Article 9.9 in **CROA Cases #1124 and #1139** the grievors in this case were clearly required to perform "additional yard duties" upon their reporting for work to discharge their regular road service duties pursuant to their normal job call. There no second and distinct job call with respect to the performance of "extra service" as contemplated by that provision. Indeed, had such a second call been made the grievors would be entitled to the premium of a day's pay irrespective of the relatively short duration (in this case 35 minutes) of the yard services that were performed. In other words the obstacle impeding the grievors from the payment of the requested premium is the absence of a distinct and separate call to perform extra services and not the duration of the additional work that was performed.

The trade union's "real" grievance in this case is unrelated to any entitlement that the grievors may allegedly have held against the company pursuant to Article 9.9. That is to say, at the heart of the trade union's complaint is the charge that the company under Article 43.2 of Agreement 4.16 has improperly "abolished" the yard at South Parry to artificially create the circumstance where at the relevant time no yard employees were employed. As a result it was able to exploit that situation for purposes of using road service employees to perform yard duties without any requirement for payment of the "extra service" premium. Article 43.2 reads as follows:

> **43.2** A yard will be considered abolished when work in that yard is discontinued for Yardmen without any expectation of it being re-established.

The company went to great lengths to suggest that the "abolition" of a yard assignment does not necessarily constitute the abolition of a yard for purposes of Article 43.2. The trade union held a different view of that provision in the light of the fact that the one assignment constituted the yard work regularly performed at the South Parry Yard. It is common ground that the "abolition" took place "temporarily" over the Christmas Season when rail operations were slow. It appears to me, however, that the resolution of this particular dilemma for present purposes is academic because the trade union has grieved on behalf of the wrong employees. Surely, the aggrieved employees, if the trade union is correct with respect to its allegation of the company's violation of Article 43.2, were the yard employees normally assigned to the South Parry Yard or the spare yard employees who were required to be on call to provide relief work. These were the employees who have been allegedly victimized by the company's breach of their exclusive entitlement to perform yard work.

The grievor's in this case were required to perform the yard work (and were paid accordingly) irrespective of whether or not the company had improperly "abolished" the yard at South Parry. As hitherto suggested, the condition precedent for the invocation of the Article 9.9 premium had not been established with respect to the performance of any "extra service" apart from their regular road service duties. Accordingly, their grievances were without merit. Had the appropriate grievances been presented on behalf of the yard service employees then different considerations may very well have applied. But, the trade union cannot through Article 9.9 seek to penalize the company for a breach of the collective agreement that no relevance to the named employees in the grievance.

For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR