

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1409

Heard at Montreal, Thursday, September 12, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor G. D. Fryklund and crew Moose Jaw for 100 miles account a Brandon crew performing switching in the yard at Estevan.

JOINT STATEMENT OF ISSUE:

Estevan is a yard defined as such on page 295 of the Current collective agreement between the Company and the Union and falls within the Saskatchewan Seniority District No. 3. On December 14, 1984 a Brandon crew from Manitoba Seniority District No. 2 was used to perform switching in the yard not in connection with their own train, instead of using Conductor Fryklund and crew from Saskatchewan Seniority District No. 3 who were available. This has not been denied at any step of the grievance procedure.

The Union contends that all yard work at Estevan not pertaining to the train of the crew called in train service is work to which Saskatchewan Seniority District trainmen/yardmen have an entitlement. The Union further contends that the yard work performed in this instance was not work connected with the train for which the Brandon crew was called, and, as the Moose Jaw crew was deprived of work which was rightfully theirs, the claim submitted by Conductor Fryklund is proper and we request that it be allowed.

The Company contends that notwithstanding the fact that Estevan is a Yard on the Saskatchewan Seniority District, the terminal is common to crews from both Moose Jaw and Brandon and crews from either seniority district may be used, on terminal time, to perform any switching required in the terminal, and have disallowed the claim.

FOR THE UNION:

(SGD.) J. H. MCLEOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. CHAMPION
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

J. D. Champion – Supervisor, Labour Relations, Winnipeg
R. Noseworthy – Assistant Supervisor, Labour Relations, Winnipeg
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Union:

J. H. McLeod – General Chairman, Calgary
P. P. Burke – Vice-President, Calgary
L. Schillaci – Secretary, Calgary

AWARD OF THE ARBITRATOR

Article 11(d) of the collective agreement reads in part as follows:

Trainmen shall be paid initial terminal time, including switching, on a minute basis at 12.5 miles per hour at pro rata rates from time required to report for duty until departure of the locomotive ...

CROA 194 and **497** were relied upon by the Company for the proposition that the "switching" performed by Trainman (in this case the Brandon crew) need not be restricted by article 11(d) to "switching" which is merely incidental to a crew's particular trip. In other words, "switching" may be performed by any crew (irrespective of seniority district) provided it is performed within the terminal where its train is located. As a result the Company argued that it was perfectly entitled under article 11(d) to assign "switching" functions to a Brandon crew with respect to another train while stationed in the Estevan yard.

I wish to reserve on the accuracy of that proposition in this decision as I need not make any definitive conclusion for the purpose of disposing of this case.

The Trade Union's claim that the disputed "switching work" should have been assigned to Conductor G. D. Fryklund's crew is based on article 7(d) of the collective agreement. That provision confers a preference to "yardmen" based in Seniority District 3 (i.e., Saskatchewan) "of work and promotion according to seniority in one or more yards under their respective Superintendents".

The Trade Union has conceded, however, that because of the lack of yard work there are no yardman positions at Estevan. Indeed, the Trade Union's objective in this case is to apply article 7(d) so that a Train Crew, albeit based in Moose Jaw, should be given the preference in the absence of any Yardman in Seniority District 3 who may have been eligible to file a claim for the disputed "switching" work.

The Company has argued that such preference would only apply in a circumstance where sufficient "Yardman's" work was available at Estevan for purposes of creating a yardman's assignment or position. Since the disputed "switching" work that was performed consumed less than two hours time the Company was thereby released from any obligation under article 7(d) to confer a preference on a Yardman (whether or not he also performed the dual function of a Trainman) based in Seniority District 3.

At the outset of its brief the Trade Union conceded exactly what the employer has asserted. At P2 the Trade Union stated "no yard assignment exists at Estevan" because of "insufficient work". And in the absence of sufficient work to constitute a Yardman's assignment or promotion I cannot conclude that the preference claimed by Conductor Fryklund is warranted.

Surely article 7(d) contemplates that the exercise of seniority for the purpose of securing the preference to yardman's work is premised on their being a yardman's position. Although this may not appear as clear as it might by virtue of the parties use of the word "work" in the provision, it is certainly made more obvious by the parties use of the word "promotion". I cannot imagine an employee invoking article 7(d) in order that he be promoted for the purpose of performing less than two hours work.

Accordingly, on the basis of my interpretation of article 7(d) I am satisfied that the Trade Union has not established a basis for invoking the preference on Conductor Fryklund's behalf to perform the disputed switching work. As a result, the employer's assignment of the switching work to the Brandon crew may very well be justified on the basis of its exercise of a management right. The grievance is therefore denied.

(signed) DAVID H. KATES
ARBITRATOR