

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1692

Heard at Montreal, Thursday, September 10, 1987

Concerning

### ALGOMA CENTRAL RAILWAY

And

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claim of Yard Foreman P. Rivard and crew for handling regular passenger Train No. 2 from Steelton Yard to the Bay Street Passenger Station on June 28, 1986.

#### **JOINT STATEMENT OF ISSUE:**

The crew of Passenger Train No. 2 on June 28, 1986 booked rest on arrival at Steelton Station after having previously advised the Company that they would do so in accordance with article 49(a) of the current collective agreement.

Yard Foreman P. Rivard and crew who were on duty and working in Steelton Yard were instructed to handle Passenger Train No. 2 from Steelton Station to the Bay Street Passenger Station.

Further, similar situation happened where the Company had this in a demand in negotiations and they dropped it.

The Union contends that passenger train duties are not the duties of yardmen and inasmuch as they were instructed by the Company to perform passenger train duties the yardmen should be paid additional for this service as per article 2 of the current collective agreement.

The Company contends that yardmen are "trainmen" and may be required from time to time to handle passenger equipment. The Company believes article 79 and article 107 are applicable and therefore declined payment of the claim of Yard Foreman P. Rivard and crew.

#### **FOR THE UNION:**

**(SGD.) J. SANDIE**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) V. E. HUPKA**  
FOR: VICE-PRESIDENT, RAIL

There appeared on behalf of the Company:

V. E. Hupka – Manager, Industrial Relations, Sault Ste. Marie  
N. L. Mills – Superintendent - Transportation, Sault Ste. Marie

And on behalf of the Union:

J. Sandie – General Chairman, Sault Ste. Marie

## **AWARD OF THE ARBITRATOR**

It is common ground that Yard Foreman Rivard and his crew, while assigned to yard service, were required to handle passenger train #2, while it was still in transit with passengers aboard. While the run from Steelton station to the Bay Street passenger station by the crew is relatively short, that leg of the train's journey constituted road service as opposed to yard service. The Arbitrator must accept the submission of the Union that it is the nature of service which determines the employee's entitlement to remuneration.

Article 96 of the collective agreement provides as follows:

### **WORKING OUTSIDE SWITCHING LIMITS**

Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in cases of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one (1) hour for the class of service performed, in addition to the regular yard pay, and without any deduction therefrom for the time consumed in road service.

The Arbitrator is satisfied that in the instant case the yard crew was used in road service and are entitled to be paid in accordance with the provisions of article 96. I cannot accept, however, that they were entitled to the minimum pay for passenger service provided in article 2, as claimed by the Union. Article 2 is a general provision intended to provide a minimum guarantee to road crews. Article 96 is more particular in describing the entitlement of yard crews required to perform road service.

For these reasons the grievance is allowed in part. The employees are to be compensated in accordance with the terms of article 96. I retain jurisdiction in the event of any dispute between the parties respecting the assessment of compensation.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**