CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1771

Heard at Montreal, Wednesday, 13 April 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of Locomotive Engineers G. Peticlerc, D. Labelle and D. Ditola, Quebec Division, on various dates, each for 30 minutes account picking up or setting out Diesel Units while in Road Switcher Service, as per Article 5(f) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

During various tours of duty, Locomotive Engineers G. Peticlerc, D. Labelle and D. Ditola, who were regularly assigned to Road Switcher assignments, were required to set out or pick up Diesel Units and, as a result, wage claims were submitted claiming an additional 30 minutes as per Article 5(f). The Company declined payment.

The Brotherhood subsequently appealed the matter contending these Locomotive Engineers were entitled to the 30 minutes, pursuant to the provisions of Article 5(f) of the BLE Collective Agreement.

The Company declined payment of the additional 30 minutes.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) G. N. WYNNE	(SGD.) J. A. LINN
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

R. J. Pelland	– Labour Relations Officer, Montreal
R. A. Decicco	– Supervisor, Labour Relations, Toronto
B. P. Scott	– Labour Relations Officer, Montreal
F. Pellgrino	– Master Mechanic, Quebec Division, Montreal

And on behalf of the Brotherhood:

G. N. Wynne	– General Chairman, Smith Falls
T. G. Hucker	– General Chairman, Calgary
A. Bourgouis	– Local Ghairman, Montreal
G. Hallé	– General Chairman, CN East, Quebec

AWARD OF THE ARBITRATOR

The material establishes that on a number of occasions in September, October and November of 1986, while employed as locomotive engineers in Road Switcher Service on the Quebec Division the grievors were required, during their regular tour of duty, to set out or pick up diesel locomotive units at Ste. Thrse and St. Martin Junction. They claim, for those services, an additional thirty minutes (six miles) under Article 5(f) of the Collective Agreement. The Brotherhood's position is twofold: firstly it submits that the language of the article supports the

claim and, alternatively, it argues that the claim is consistent with payments made by the Company on the Quebec Division in the past.

Article 5(f) provides, in part, as follows:

> **(f)** Picking Up and Setting Out Diesel Units in Road Service Road Engineers on diesel locomotives who are receiving road rates of pay and paid under rules applicable to road service, who are required to set out or pick up a diesel unit (or units) between terminals of a particular run which involves the making or breaking of connections between the units by the Engineer or who are required to make the train conventional from robot operated or vice-versa, will be paid 30 minutes at the pro-rata rate of the trip ...

The Company relies on the provisions of Article 7(D)(3) of the Collective Agreement which is as follows:

> **ROAD SWITCHER SERVICE**
> **7 (D) (3)** Engineers assigned to such Road Switcher Service will perform all service required and may be run in and out and through their regular assigned terminals without regard for rules defining completion of trips, but will not be run off their promotion territories, time to be computed continuously from shop track to shop track with time and one-half after 8 hours exclusive of preparatory and inspection time.

It is common ground that the grievors were working in Road Switcher Service. Road Switcher Service and Road Service are two different and distinct kinds of running assignments, each with separate provisions within the Collective Agreement governing the payment of engineers so assigned. Apart from issues of past practice or estoppel, Article 5(f) of the Collective Agreement can apply only to engineers paid under rules governing Road Service. This the grievors manifestly were not. As engineers assigned to Road Switcher Service they were, on the basis of the Collective Agreement, entitled to payment for their time computed continuously from shop track to shop track. The provisions of Article 7(D)(3) and those of Article 5(f) plainly address different situations. Not being in Road Service or, more precisely, paid under rules governing Road Service, the grievors can have no contractual claim to payment under Article 5(f) of the Collective Agreement.

The only issue remaining is whether, because they were so paid in the past, the Company has violated the Collective Agreement by reverting to its right to pay them under Article 7(D)(3). When a Collective Agreement is ambiguous in its terms a board of arbitration may resolve that ambiguity by having reference to past practice. That principle has no application here. There is plainly no ambiguity or uncertainty as between the provisions of Article 5(f) and those of Article 7(D)(3). In these circumstances the fact that the Company may have paid the higher rates erroneously in the past cannot be relied on as an argument in aid of interpretation.

Nor can the Arbitrator conclude that estoppel applies. That doctrine comes to bear when one party to a contract expressly or impliedly represents to the other that it will not enforce its strict contractual rights, and the other party acts in reliance on that representation in a way that would cause prejudice to it if the party making the representation subsequently reversed itself and sought to apply the strict terms of the contract. In the instant case there is no evidence of any such representation on the part of the Company. Putting it at its highest, the Company, in the treatment of some employees on the Quebec Division, erred in the administration of the Collective Agreement. There is no evidence that the Brotherhood or any of the employees changed their position in reliance on the Company's error or were prejudiced, at the bargaining table or otherwise, as a result of any reliance on the Company's actions. The material discloses a straightforward case of error on the part of certain of the employer's officers in the application of the Collective Agreement, and a subsequent correction. In moving to restore the payment of the grievors to the Road Switcher Service provisions of Article 7(D)(3) the Company acted fully within its rights under the Collective Agreement.

For the foregoing reasons no violation of the agreement is disclosed, and the grievance must be dismissed.

April 15, 1988

(signed) MICHEL G. PICHER
ARBITRATOR