CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2076

Heard at Montreal, Thursday, 15 November 1990

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim dated March 30, 1989, for 100 miles at yard rates on behalf of Engineer C.P. DeRoche for work performed on arrival at Winnipeg under Article 3(c)3 of the current Collective Agreement.

JOINT STATEMENT OF ISSUE:

On arrival at Winnipeg on March 30, 1989, on a coal train destined for the CN Rail interchange Engineer DeRoche was instructed to place his train on the main track and take his unit consist to the diesel shop for fuelling. Once the unit consist was fuelled and serviced, Engineer DeRoche moved from the diesel shop back to his train on the main track and continued on to the CN Rail interchange. For this movement, Engineer DeRoche claimed 100 miles for this other work under the current Collective Agreement.

The Company has declined payment and submits that since the grievor was neither released from duty nor had he yarded his train, the punitive provisions of Article 3(c)3 are not applicable to this case.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) T. G. HUCKER	(SGD) J. M. WHITE
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS

There appeared on behalf of the Company:

D. A. Lypka	– Unit Manager, Labour Relations, HHS, Vancouver
D. M. Hayden	– Deputy Superintendent, Winnipeg
B. P. Scott	– Labour Relations Officer, Montreal
F. O. Peters	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker	– General Chairman, Calgary
J. Flegel	– Vice-General Chairman, Saskatoon
B. Marcolini	– President, UTU–Canada, Ottawa

AWARD OF THE ARBITRATOR

The instant grievance turns on the application of Article 3(c)(3) of the Collective Agreement which provides, in part, as follows:

> **3(c)(3)** Shop Track – Engineer will be paid final terminal time, including switching, on minute basis at pro rata rates from time the locomotive reaches the outer main track switch or designated point at the final terminal; should train be delayed at semaphore, yard limit board, or behind another train similarly delayed, time shall be computed from the time engine reached that point; time shall continue until 15 minutes after engine is placed on designated shop track or is turned over to the hostler, inspector or another engineer. Final terminal time shall be included in making up short day.
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> Where yard engines are on duty, Engineers, after arrival at final terminal, may be required to set cars off their train at one yard location within the terminal en route to the destination yard and will yard their train in the designated track in that yard. In the event a double is required to yard the train, the appropriate cut of cars, not just the overflow, will be doubled over provided this will not increase the number of moves necessary to make a double. When a train is yarded on mainline tracks and is clear at headend and tailend in order to allow access and switching requirements it will be considered yarded. Such engineers will be considered released from duty in accordance with applicable rules after yarding their train except that they may be required to perform switching in connection with their own train to place cars containing perishables or stock for servicing or unloading or to set off rush or bad order cars as directed for future movement. Should they be required to perform other work when yard engines are on duty they will be paid a minimum of 100 miles at yard rates for such service. When no yard engine is on duty, road Engineers will do necessary yard switching subject to release from duty in accordance with applicable rules.

The thrust of the Brotherhood's position is that in moving his engine consist from the main track to the shop track for refuelling the grievor was required to perform "other work" within the contemplation of the second paragraph of the article, and was therefore entitled to be paid a minimum of 100 miles at yard rates. The counter position of the Company is that the work performed was in relation to the ongoing movement of the grievor's train, which had not yet been finally yarded in its destination yard of Paddington, at a time when the grievor was not yet released from duty in relation to his road assignment.

It is common ground that the operation which gives rise to this grievance has been in effect for some years, although in a different form for a certain time, for the purpose of ensuring that a freshly fuelled and inspected train is delivered to the CN Rail interchange at Paddington for furtherance to Atikokan under the direction of a CN crew. For a considerable period of time the refuelling was done at fuel stands adjacent to the main track, and in that circumstance the engineers remained on final terminal time until the refuelling and inspection was completed, and the train was yarded at its ultimate destination at Paddington. The difference which gives rise to this grievance is that the motive power is now uncoupled from the train, which is left on the main track, and proceeds to the shop track to be refuelled, in compliance with improved environmental and safety standards.

The material reflects that the work involved has consistently been performed by road engineers, and that it attracted the rate of pay applicable to final terminal time without apparent objection from the Brotherhood, at least until the change was implemented. The issue becomes whether the requirement to uncouple the locomotive units and move them to and from the shop track for refuelling takes the work outside the concept of work related to the locomotive engineer's road assignment, so that it becomes "other work" within the contemplation of the second paragraph of Article 3(c)(3).

A general reading of the article reveals the intention of the parties that engineers are to be paid final terminal time, and not punitive rates, for train movements within the final terminal, and before reaching the destination yard or being turned over to a hostler, inspector or another engineer. That is what has occurred in the instant case. In essence, as before, for purposes of refuelling, the grievor's train was compelled to make certain moves within Winnipeg Yard. This is not a circumstance which it can be said that a train has been yarded on main line tracks, or that the engineer is to be considered released from duty after yarding the train. Moreover, if it were necessary to so find, I would conclude that the movement of the locomotive consist in the circumstances disclosed would fall within the broader concept of switching in connection with the grievor's own train, as distinguished from the performance

of other work as contemplated in Article 3(c)(3). It seems clear that "other work" was intended to apply to work entirely unrelated to the engineer's road assignment.

The above conclusion is, moreover, consistent with award of this Office in **CROA 1340**, a case involving a different but nevertheless analogous fact situation. It was there found that work performed at the conclusion of a road assignment, in relation to setting off a locomotive unit and taking it to the shop track, did not fall within the concept of "other work" within the terms of a collective agreement provision similar to Article 3(c)(3). In my view the principles underlying that award apply in the instant case.

For the foregoing reasons the Arbitrator concludes that the claim of Locomotive Engineer DeRoche for payment at the rate of 100 miles at yard rates is not established. He was properly paid for final terminal time, and the grievance must therefore be dismissed.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR