CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2186

Heard at Montreal, Tuesday, 8 October 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yardmaster R. Tighe, MacMillan Yard, dated May 30, 1987.

JOINT STATEMENT OF ISSUE:

At the material times, Yardmaster Tighe was assigned to the 0700-1500 South Control assignment at MacMillan Yard in Toronto.

On May 30, 1987, he reported for duty on his regular assignment. At or about 1000, he was required to report to the East Control tower at MacMillan Yard and perform yardmaster duties for the remainder of his eight hour shift.

In addition to his regular wages for May 30, Yardmaster Tighe claimed that he was entitled to a second day's pay as a result of being required to perform yardmaster's duties at East Control. This claim for a second day's pay was declined.

The Union contends that Yardmaster Tighe is entitled to the additional day's pay pursuant to the provisions of paragraph 1.2 of Article 1 and paragraph 4.3 of Article 4 of Agreement 4.2.

The Company disagrees.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) W. G. SCARROW	(SGD.) M. DELGRECO
GENERAL CHAIRPERSON	for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. S. Hughes	– Labour Relations Officer, Montreal
J. B. Bart	– Manager, Labour Relations, Montreal
D. L. Brodie	– Labour Relations Officer, Montreal
J. Vaasjo	– Labour Relations Officer, Toronto
R. Lopatriello	– Trainmaster, MacMillan Yard, Toronto

And on behalf of the Union:

F. Garant	– Vice-General Chairperson, Montreal
W. G. Scarrow	– General Chairperson, Sarnia
R. Long	– Secretary, G.C.A., Hamilton

AWARD OF THE ARBITRATOR

In this grievance the onus is upon the Union to establish that a provision of the collective agreement has been violated. It is common ground that on May 30, 1987 Yardmaster Tighe worked an eight hour shift at MacMillan Yard in Toronto. Part of his tour of duty was devoted to work on the South Control Assignment, which is his normal assignment, while several hours of the shift involved work on the East Control Tower because of the absence of the employee regularly assigned to that work. It is also agreed that no one was assigned to substitute for the grievor in the South Control Tower while he was at work in the East Control Tower, and that he was not asked to perform the work of both towers simultaneously. Additionally, the representation of the Company, which is unrebutted by any

evidence adduced by the Union, is that at the time no qualified yardmaster was available to relieve the yardmaster who had reported sick that morning.

The claim is based on the following provisions of the collective agreement:

> **1.2** Yardmasters are defined as those who are directly responsible for yard operations in a certain specified territory during the hours of their assignment.
>
> **4.3** Yardmasters who report for duty for a regular or extra assignment shall be allowed a minimum of eight hours' pay, for which eight hours' service may be required, unless they lay off of their own accord, in which event they shall be allowed actual time worked at pro-rata rate.

The thrust of the Union's submission is that the transfer of Yardmaster Tighe from the South Control Assignment to work in the East Control Tower at MacMillan Yard was tantamount to a call for duty for an extra assignment within the contemplation of article 4.3 of the collective agreement. In support of that view it submits that article 1.2 contemplates the assignment of a yardmaster to be specific to a particular territory. Any change of territory, it argues, even during the course of a tour of duty, constitutes an extra assignment which attracts the pay provided for in article 4.3 of the collective agreement. On that basis it maintains that the grievor was entitled to sixteen hours' pay for the work performed on his eight hour shift.

The Arbitrator cannot accept the submission of the Union. The term "extra assignment" as contemplated in article 4.3 must, it seems to me, be interpreted in light of the purpose of that provision. It is clear from the language of article 4.3 that it addresses the circumstance of an employee who reports for duty, whether for a regular assignment or for an extra assignment, and for whom eight hours' work is not ultimately available. It is, in other words, in the nature of a call-in pay provision such as may be found in many collective agreements, the purpose of which is to protect an employee who has suffered the inconvenience of coming to work and who might, otherwise, be sent home without a full day's pay in circumstances where a full day's work might not be available. In the instant collective agreement the employee is guaranteed a minimum of eight hours' pay for reporting for duty, whether for a regular or an extra assignment. It does not, as the Union argues, address the issue of whether an employee can be temporarily assigned elsewhere than at his or her normal place of assignment.

Additionally, the definition of yardmasters provided in article 1.2 does not, in the Arbitrator's view, speak to the issue raised by this grievance. The definition of yardmasters occurs within the broader context of article 1 of the collective agreement which governs rates of pay, and which primarily serves to distinguish yardmasters from other employees, including assistant yardmasters who are separately defined in article 1.4. Nothing on the face of this provision, including the reference to a yardmaster being "responsible for yard operations in a certain specified territory" can be reasonably interpreted to limit the right of the Company to determine, in a circumstance of urgency, that a yardmaster must be transferred from one work station to another within a given yard. It appears to the Arbitrator that the strongest argument that can be made by the Union is the suggestion that the moving of Yardmaster Tighe from one control tower to another was inconsistent with the bulletining provisions and practices under the collective agreement. It does appear undisputed that yardmaster assignments are awarded under article 24.4 pursuant to a process whereby the specific tower assignment is identified. While it is not necessary to decide the matter in the instant case, it would be arguable that there has been an undermining of that provision if it could be shown that some other employee or person was given the grievor's work to perform in the South Control Tower while he was transferred to the East Control Tower at MacMillan Yard. That did not transpire, on the evidence, however, and at most the evidence discloses a decision by the Company to temporarily transfer the grievor from one assignment to another in a circumstance of urgency, where no other qualified yardmasters were available, and where his own regular assignment remained vacant for the duration of his transfer. In these circumstances no violation of the collective agreement is disclosed.

For the foregoing reasons the grievance must be dismissed

October 11, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR