CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2224

Heard at Montreal, Wednesday, 15 January 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of Unassigned Yardmasters Bondy, Karn and Porter and of Yardmaster Guignard of Windsor for loss of earnings on various dates between July 15 and September 9, 1989.

JOINT STATEMENT OF ISSUE:

Both prior to and at the material times, no yardmaster's assignment was scheduled to work at the Board Yard in Windsor, Ontario from 1500 each Saturday to 0700 each Sunday. Prior to July 4, 1989, it had been customary to call an unassigned yardmaster to work at the Boat Yard from 1500 to 2300 each Saturday although these hours did not form part of any regular or relief yardmaster assignment.

On or about July 4, 1989, the number of yard assignments working in Windsor were reduced and, as a consequence, the Company ceased to call unassigned yardmasters to work the hours in question.

The Union contends that various unassigned yardmasters and one regularly assigned yardmaster (Guignard) should have been called to work the hours in question on various Saturdays during the material times. The Union claims that these employees are entitled to loss of earnings pursuant to the following provisions of Agreement 4.2: paragraph 1.2 of Article 1; paragraph 3.5 of Article 3; and paragraph 10.1 of Article 10. As well, the Company is in violation of the principles contained in the Canada Southern Railway Agreement.

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:

J. B. Bart	– Manager, Labour Relations, Montreal
D. L. Brodie	– Labour Relations Officer, Montreal
N. Dionne	– Labour Relations Officer, Montreal
J. Vaasjo	– Labour Relations Officer, Toronto

And on behalf of the Union:

P. G. Gallagher	– Vice-General Chairman, Fort Erie

AWARD OF THE ARBITRATOR

The dispute, as presented in the Joint Statement of Issue, is confined to whether the Company was compelled to call a yardmaster to work at the Boat Yard in Windsor from 1500 to 2300 on Saturday. A related issue, as appears in the final sentence of the penultimate paragraph of the Joint Statement of Issue, is whether the Company is in violation of the principles contained in the Canada Southern Railway Agreement.

The Arbitrator cannot sustain the claims advanced by the Union. Firstly, it has pointed to no provision of the Collective Agreement, or of the terms of the Special Agreement negotiated in relation to the Canada Southern Railway acquisition, which guarantees exclusive jurisdiction for its members over the work in question. More substantially, however, there appears to be nothing in the terms of the Collective Agreement, or of the Special Agreement, which would limit the discretion of the Company to "blank" the 1500 – 2300 Assignment on Saturday when it does so for valid business purposes. The material before the Arbitrator establishes, beyond controversy, that at the time in question the Norfolk & Southern Railway suspended ferrying traffic from Detroit to the Boat Yard on the Saturday afternoon shift because of a downturn in traffic. At or about the same time a train operating into the yard from Toronto was abolished. There was, consequently, a rearrangement of work in the Boat Yard which resulted in the elimination of two afternoon yard engine assignments on Saturdays.

While the material discloses that a yardmaster on duty at the Van de Water Yard, in what was formerly Canada Southern Railway territory, might technically have some supervisory jurisdiction over yard movements in the Boat Yard on the shifts in question, from a practical standpoint the involvement of that yardmaster is marginal, if not negligible. It appears beyond dispute that the directions to the sole transfer crew operating within the Boat Yard were almost entirely obtained in a print-out form issued previously by yardmasters regularly assigned to the Boat Yard.

In the circumstances, for the reasons related, the Arbitrator can find no violation of the Collective Agreement, nor of any provision of the Canada Southern Railway Agreement. The grievance must therefore be dismissed.

January 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR