

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2286

Heard at Montreal, Wednesday, 14 October 1992

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Claims of various trainmen working in roadswitcher service out of Dartmouth, N.S. for an additional day's pay at yard rates on various dates in January and February, 1985 and January and February, 1986.

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

During the material times, certain trainmen employed in road-switcher service out of Dartmouth, N.S. were required, as the final move of their tour of duty, to transfer empty cars from Track DD-41 at the National Gypsum unloading facility at Wright's Cove to Track DD-14 at Burnside. As a consequence, these trainmen submitted claims for an additional day's pay at yard rates in addition to their regular wages. The claims for an additional day's pay were not paid.

The Union contends that, since this movement of cars took place entirely within switching limits, it constitutes work to which yardmen are entitled. Therefore, pursuant to paragraph 41.1 of Article 41 of the collective agreement, the grievors are entitled to the additional day's pay as a consequence of being required to perform yardmen's work.

The Company disagrees with the Union's contentions.

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

**(SGD.) R. LABEL**  
GENERAL CHAIRMAN

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

**(SGD.) J. B. BART**  
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal  
D. L. Brodie – System Labour Relations Officer, Montreal  
B. O. Steeves – District Transportation Officer, Moncton

And on behalf of the Union:

R. Label – General Chairman, Quebec  
B. Dubé – Vice-General Chairman, Quebec  
B. Wood – General Chairman, BofLE, Quebec

## AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the employees who are the subject of the grievance were called upon to perform switching additional to their normal road switching assignment. Specifically, they were required to move cars which were unrelated to their train between two points within the switching limits of Dartmouth Yard.

The Union relies on the application of paragraph 41.1 of the collective agreement which provides as follows:

**41.1** Switching, transfer and industrial work, wholly within the recognized switching limits, will at points where yardmen are employed, be considered as service to which yardmen are entitled, but this is not intended to prevent employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

The thrust of the Company's position is that article 41.1 has no application to the facts at hand, because Dartmouth is an open yard. In the Arbitrator's view that position cannot succeed. In **CROA 1590** article 41.1 of the collective agreement was found to apply in similar circumstances, in Sudbury Yard, which is also an open yard. The argument advanced in the instant case was also advanced in the hearing of that grievance and was specifically rejected by the Arbitrator. Nor, in my view, can the Sudbury case be distinguished on the basis of the amount of yard switching which the road switcher crew was there called upon to perform.

Article 41.1 placed upon the Company an obligation to assign yard switching within the switching limits of Dartmouth Yard to yardmen who are employed at that location. The work in question was not work in relation to their own train, or to putting their train away.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs that the employees who are the subject of this grievance be compensated an additional day's pay, as claimed.

October 16, 1992

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