CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2426

Heard in Montreal, Tuesday, 14 December 1993

concerning

CANADIAN PACIFIC LIMITED

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

DISPUTE:

The application and interpretation of article 30A, paragraph 11(2) of the collective agreement.

JOINT STATEMENT OF ISSUE:

Yard crews at Toronto Yard have been instructed to apply an SBU to the tail end of trains they handle and spot for departure.

The Union stresses that, pursuant to article 30A(11)(2), yard crews working Pulldown Assignments at Toronto Yard are not required to attach SBU's to pre-departure trains that they handle.

It is further the position of the Union that this provision was only intended to apply to yard crews who were working assignments equipped with cabooses that the Company intended to remove.

It is the Company's position that, consistent with safety considerations and the optimum deployment of human resources, the attachment of an SBU may be performed by any qualified personnel, including but not limited to trainmen.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) D. A. WARREN	(SGD.) M. G. MUDIE
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

C. Bartley	– Labour Relations Officer, Toronto
R. Hunt	– Labour Relations Officer, Montreal
B. Scott	– Labour Relations Officer, Montreal
R. Wilson	– Labour Relations Officer, Vancouver

And on behalf of the Union:

D. A. Warren	– General Chairperson, Toronto
J. Skorobohach	– Local Chairperson, Toronto

AWARD OF THE ARBITRATOR

This grievance concerns the interpretation of article 30A(11)(2) of the collective agreement which provides as follows:

> **30A(11)(2)** Trainmen and Yardmen will be required in respect of their train to apply, test and remove Train Information Braking System (TIBS) equipment and change batteries as required. This will not preclude the use of other qualified personnel. However, when a train is subject to a certified car inspection, (CCI), a qualified employee other than a trainman or yardman, if readily available, may be required to perform these duties.

The Union submits that the Company has violated the collective agreement by requiring yard crews at Toronto Yard to pick up an SBU when they are transferring a newly assembled consist of cars from the classification tracks to the departure track, and then installing the SBU on the tail end of the train which is being made ready for departure. The Union submits that the consist of cars placed in the departure track is not the yard crew's train within the meaning of paragraph (11)(2) of article 30A of the collective agreement. It submits that the language of that provision contemplates a circumstance in which a yard crew is in fact in charge of a train which must itself carry an actively functioning SBU on its tail end. Three examples given include a snow removal train, a work train or a train being transferred between two yards by a yard crew.

The Company, on the other hand, argues that a consist of cars which is assembled and made ready for departure, and spotted on the departure track is a "train" within the contemplation of article 30A(11)(2) of the collective agreement, and that when a yard crew moves an assembled consist to the departure track they can be said to be moving "their train", and to be subject to performing the work relating to the Train Information Braking System (TIBS), or SBU which attaches to that consist.

The matter is not without some difficulty, particularly as it relates to defining a train in relation to yard crews. In a prior award of this Office, albeit relating to a different collective agreement, it was found that applying, testing and removing TIBS equipment by conductors "in respect of their train" could not extend to a train other than the train for which a given road crew was responsible. In the case at hand, the issue becomes the meaning of the words "their train" as it applies to the service performed by yardmen. If reference is had to the definition of a train as it appears in the Canadian Rail Operating Rules, the following is found:

> TRAIN An engine or more than one engine coupled, with or without cars, or a track unit(s) so designated by its operating authority, displaying a marker(s).

It is common ground that a consist of cars, whether it be in classification tracks, in transit to a departure track or spotted on a departure track does not conform to the above definition of a train, as it bears no marker. Indeed, it is the SBU which itself becomes the marker on the tail end of the unit at such times as it coupled to a locomotive and becomes a train within the meaning of the CROR.

In the Arbitrator's view, however, where the work of yardmen is concerned, it is unduly narrow and technical to apply the CROR definition of "train", without more, to article 30A(11)(2) of the collective agreement. The article must, I think, be interpreted in a purposive sense, having regard to the work commonly performed by trainmen and yardmen. The work of yardmen largely involves the assembling and marshalling of trains within freight yards. It is, I think, not unreasonable to conclude that the parties would have contemplated that a consist of cars assembled and moved to a point of departure could be fairly characterized as a train or, at the least, to borrow the language of the Joint Statement of Issue, a pre-departure train, for which the yard crew is responsible. In that sense, it is not unreasonable to conclude that what is being handled is "their train" as that concept would be contemplated by article 30A(11)(2) of the collective agreement.

From a historic standpoint, the same conclusion finds support. Although it is common ground that in the yard which is the subject of this grievance train movements could traditionally be cabooseless, it was normally the responsibility of the yard crew to couple the caboose to a train being placed on a departure track. To the extent that the SBU replaces the caboose, by moving and installing the SBU the yardmen can be said to be fulfilling an analogous task.

It should perhaps be stressed for the purposes of clarity that, in the case at hand, the Company does not argue that yard crews can be compelled to handle TIBS equipment other than that equipment which will be installed on a train which the crew is responsible for spotting prior to departure. The Arbitrator is satisfied that the consist is then sufficiently identifiable as a train, and that it may be said to be the yard crew's train for the purposes of article 30A(11)(2) of the collective agreement. The Company's position, and the interpretation of the Arbitrator, should not

be taken any further, however. It would, as the Company's spokesperson concedes, arguably be out of keeping with the intention of the article, if a newly arrived yard crew were dispatched only for the purpose of transporting a TIBS unit to a train consist which had already been assembled and spotted for departure by another crew. In that circumstance, by the Company's implicit admission, the movement could not be said to be second crew's train.

For the foregoing reasons the grievance must be dismissed.

17 December 1993 **(sgd.) MICHEL G. PICHER**
ARBITRATOR