

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2954

Heard in Calgary, Thursday, 14 May 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

The Company's refusal of payment of a Conductor-Only premium payment to Conductors P.N. Kaiser and R. Craik for setting off more cars than was necessary to yard their train.

JOINT STATEMENT OF ISSUE:

On December 20, 1996 and January 19, 1997, Conductors Kaiser and Craik were requested to set off an additional 2,000 feet of train more than was necessary to yard their train.

The Council contends that while performing the work in this fashion may be logical, it now becomes a set-off pursuant to articles 9A(2)(d)(i) and (ii), and article 11(i)(8) of the collective agreement, and has requested payment of the one-hour premium.

The Company contends that once established that a cut must be made in order to yard a train, it is immaterial where such cut is made and has declined the Council's request and claims.

FOR THE COUNCIL:

(SGD.) JEFF KNOWLES
FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. E. WEBB
FOR: DISTRICT MANAGER, B.C. DISTRICT

There appeared on behalf of the Company:

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| K. E. Webb | – Manager, Labour Relations, Calgary |
| R. V. Hampel | – Labour Relations Officer, Calgary |
| M. E. Keiran | – Director, Labour Relations, Calgary |
| D. Loewen | – Assistant Labour Relations Officer, Calgary |
| G. S. Seeney | – Manager, Labour Relations, Calgary |

And on behalf of the Council:

- | | |
|-----------------|---------------------------------------|
| J. K. Jeffries | – Vice-General Chairperson, Cranbrook |
| L. O. Schillaci | – General Chairperson, Calgary |
| J. Knowles | – Vice-General Chairperson, Calgary |
| E. DiCredico | – Vice-General Chairperson, Nanaimo |
| D. H. Finnson | – Secretary, Saskatoon |

AWARD OF THE ARBITRATOR

The success of these claims turns on the interpretation of article 9A, clauses 2(d)(i) and (ii) of the collective agreement which read as follows:

d) Final Terminal

- i. A conductor-only crew is limited to doubling their train at the destination yard **to the extent necessary to yard the train upon arrival because a yard track(s) is of insufficient length to hold the entire train.**
- ii. a conductor-only crew may be required to set-off a car or block of cars at the destination yard at the final terminal or at another yard within the final terminal enroute to the destination yard. This will not be considered as a stop enroute.

(emphasis added)

The grievance involves two claims, filed on behalf of Conductors Kaiser and Craik. On December 20, 1996 Conductor Kaiser was operating as a conductor-only crew. Because the track into which he was to yard his train was insufficient to hold all of the train, he was required to double over the train. In instructing him in that regard the Company ordered a "selective cut". By that process the train was broken into two parts at a point which separated the cars in such a way as to facilitate their re-marshalling into subsequent trains.

Similarly, on January 19, 1997, Conductor Craik, operating conductor-only, found himself yarding a train which was five hundred feet too long to fit in the destination track. As part of doubling over, he was instructed to make a selective cut, whereby a block on the head end of his train consisting of intermodal traffic was set off into one track, while a separate block of grain cars was placed in another track. There can be little doubt that that separation facilitated the operation of the Coquitlam yard in that the resulting cuts of cars were more fully prepared for onward marshalling.

The Council asserts that the Company effectively required both conductors to set off blocks of cars, as part of work at the final terminal, as contemplated in article 11(i)(8) of the collective agreement which reads as follows:

11 (i) (8) When a conductor-only crew is required to perform work at the final terminal defined in article 9A, 2(d)(ii) and 9A, 2(e), the conductor will be paid on the minute basis at pro rata rates for all time so occupied with a minimum payment of one hour in addition to final terminal time. This time will not be used to make up a minimum day.

On the basis of the foregoing provision, in the circumstances disclosed, the Council claims the payment of a conductor-only premium to both grievors.

The Arbitrator cannot accept the position of the Council. From a standpoint of straight-forward interpretation, in my view it cannot be said that in either case the grievors were compelled to double their trains at the destination yard beyond the extent necessary to yard them. There is nothing within the language of article 9A(2)(d)(ii) which expressly or implicitly suggests that a conductor is compelled to entirely fill a given track with a segment of his train, and to make the double over cut only at the point of overflow. The provision can, in my view, be reasonably read so as to allow a selective cut, so long as that cut is done in a manner consistent with the provision, that is to say by requiring no more moves than are otherwise necessary to yard the train. The fact that a minimum number of moves can be effected coincidental with a selective cut does not offend against the article, nor does it bring the yarding operation within the very different intention of article 11(i)(8), which deals with performing additional work at the final terminal.

The foregoing conclusion is further sustained when regard is had to explanatory question and answer 2.9, incorporated as part of article 9A of the collective agreement, which reads as follows:

2.9 Q. If a yard contains a number of tracks which can hold my train in its entirety, can I be requested to double out of or into two or more smaller tracks rather than use the long track?

- A. Yes, it may be necessary on occasion for a train to double into or out of two or more tracks even when there are tracks available to hold the entire movement **if such will facilitate the operation of the yard.**

(emphasis added)

While it is obviously not necessary, or indeed appropriate, for the Arbitrator to attempt an exhaustive analysis of the foregoing explanatory, it does appear to reflect the understanding of the parties that there may be circumstances in which a crew will be required to double their train at the destination yard, and to do so in such a way as to practically assist in the operation of the yard. While, as the Council suggests, that may sometimes involve leaving a segment of track which could otherwise fully accept the train available for a longer train which will arrive later, it can also be interpreted in the manner suggested by the Company in the instant case. Moreover, from a purposive standpoint, it is difficult to appreciate on what basis the Council can claim that there is any greater work involved in doubling their train when making a single selective cut results in no more moves in the doubling process. Obviously, an entirely different result might obtain if, in the circumstances disclosed, the grievors had been directed to make three or four selective cuts which were in fact unnecessary to the yarding of their trains. That, however, is not what is disclosed on the facts before me.

For the foregoing reasons the grievances must be dismissed.

May 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR