CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3220

Heard in Calgary, Thursday, 15 November 2001

concerning

CANADIAN PACIFIC RAILWAY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

The interpretation and application of yard article 8, clause (c) of the collective bargaining agreement between the parties.

JOINT STATEMENT OF ISSUE:

Article 8, clause (c) of the collective agreement states:

> In order to provide timely transportation service, yard crews may be used within a distance of 15 miles outside the established switching limits, to a maximum of 20 miles where the first siding extends to within 20 miles.
>
> Yard crews used outside of established switching limits in such circumstances during their tour of duty shall be compensated on a continuous time basis at yard rates and conditions.
>
> The application of this clause shall in no way have the effect of abolishing road switcher assignments.
>
> Yard crews may be used in excess of the miles outlined in paragraph one in accordance with the provisions of Clause (b), second paragraph.

The Company maintains that under this article, yard crews may be used within a distance of 15 miles outside the established switching limits, to a maximum of 20 miles where the first siding extends to within 20 miles, to provide timely transportation service which includes, but is not limited to, the following activities: **(a)** Provide switching service due to industrial activities, and **(b)** Provide switching service due to the territorial extension of facilities, and **(c)** Bring in disabled trains, and **(d)** Bring in stored/staged trains, and **(e)** Bring in trains whose crews have tied up for rest, with the yard crew completing any work which the road crew would have handled, and **(f)** Advance trains out of yard service for storage and/or staging to reduce yard congestion.

The Council maintains that the Company's interpretation is not consistent with the intended definition of "timely transportation: exceeds the scope of this work rule and is in violation of article 8, clause (c).

The parties request a declaratory ruling on the application of article 8, clause (c).

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) J. C. COPPING
FOR: GENERAL MANAGER, OPERATIONS

There appeared on behalf of the Company:

J. C. Copping	– Manager, Labour Relations, Calgary
C. D. Carroll	– Director, Labour Relations, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
C. M. Graham	– Labour Relations Officer, Calgary
G. Denham	– Manager, Operations, Road, Calgary

And on behalf of the Council:

L. O. Schillacci	– General Chairperson, Calgary
D. Finnson	– Vice-General Chairperson, Calgary

AWARD OF THE ARBITRATOR

On February 3, 1988 Arbitrator Dalton L. Larson, exercising his jurisdiction as interest arbitrator under the **Maintenance of Railway Operations Act, 1987**, issued an award part of which has become article 8, clause (c) of the collective agreement governing the work of yard crews outside of established switching limits. The article reads as follows:

> **8 (c)** In order to provide timely transportation service, yard crews may be used within a distance of 15 miles outside the established switching limits, to a maximum of 20 miles where the first siding extends to within 20 miles.
>
> Yard crews used outside of established switching limits in such circumstances during their tour of duty shall be compensated on a continuous time basis at yard rates and conditions.
>
> The application of this clause shall in no way have the effect of abolishing road switcher assignments.
>
> Yard crews may be used in excess of the miles outlined in paragraph one in accordance with the provisions of Clause (b), second paragraph.

The parties are disagreed as to the interpretation and application of the foregoing provisions. By way of a policy grievance the Council asserts that the Company has exceeded the intended scope of the language, and seeks a declaration to that effect. Very simply, it is the Council's position that the amendment to article 8, clause (c) of the collective agreement was fashioned to give the Company the ability to respond to emergencies, including providing service to customers whose transportation needs are time sensitive. Its representative submits that the Company has gone beyond the original intention, and has interpreted the phrase "to provide timely transportation service" as being the equivalent of whatever is necessary to assist the Company's operational needs.

The Company, on the other hand, maintains that the application which it has made of article 8, clause (c) is entirely consistent with its language and the original intention of the article, as it was developed during the course of bargaining, conciliation and, ultimately, at arbitration.

In the Arbitrator's view it becomes necessary to review the history of this provision. It is clear that during bargaining, which at that time involved both CNR and CPR, along with the Associated Railway Unions, the Company sought relief from the limits on the work which could be assigned to yard service employees. It would appear that the mischief which the Company sought to deal with involved several kinds of problems. It sought to be able to have greater flexibility to respond to industrial customers who are within reasonable proximity of yard switching limits, and whose needs are time sensitive. In that circumstance to dispatch a yard crew to deal with an emergent or short notice problem would allow the Company to give greater service to such a customer. Secondly, it appears that the Company wished to resolve a problem of trains which had become disabled or stored within a relatively short distance of yard switching limits, as well as trains whose crews have tied up within a short distance from yard switching limits for rest. The employer sought to gain the flexibility to be able to dispatch yard crews to handle trains outside switching limits in the above circumstances.

The matter came to be dealt with, initially, by Conciliation Commissioner Douglas Stanley. His recommendations, which were obviously not binding upon the parties, tended to see the merit in the concerns advanced by the railways. In his report, dated August 1, 1987, the following appears at pp 53-54:

> There are restrictions in the collective agreement on a yard crew working outside the yard switching limits. The railways get requests from customers outside these switching limits to have cars picked up or delivered. If a road crew has to be called in to do this work, even though a switching crew might be available, the operation is rendered less economic and the time delays may make the service unacceptable for that customer. The railways presented me with specific examples of where this was the case. I am satisfied that the restriction is an unwarranted barrier on the efficient deployment of the yard crews and road crews.
>
> I would recommend that the union accept the employers' proposal which is to delete existing limitations and replace them with the following:
>
> > 1.) Yard crew may be used for a distance of up to forty miles outside of switching limits when operations necessitate. Yard men used outside of switching limits will continue to be compensated on a continuous time basis at yard rates.
> >
> > 2.) Yard crews will also bring in disabled or stored trains, or trains whose crews have tied up for rest from locations up to forty miles outside of switching limits. The yard crew may be required to complete the work which would be handled by the road crew.
>
> The employer has said that this proposal is not designed to reduce road crews and I would recommend that such a guarantee be started outside the agreement.

Subsequently, when the parties were unable to resolve the terms of their collective agreement themselves, and were legislatively compelled to submit to interest arbitration under the **Maintenance of Railway Operations Act, 1987** the issue arose again. The companies then put the same issue to Arbitrator Dalton L. Larson, albeit with slightly modified language from the proposal put before the Conciliation Commissioner Stanley. The revised Company proposal, placed before Arbitrator Larson, read as follows:

> **Yard Switching Limits**
>
> The Collective Agreements with the BLE and UTU will be amended to provide:
>
> Yard crews may be used for a distance of up to 25 miles outside of switching limits when necessary to provide service to a customer when other alternative train/yard service is not available to provide such service.
>
> Yard crews will also bring in disabled or stored trains, or trains whose crews have tied up for a rest from locations up to 25 miles outside of switching limits. Such yard crews may be required to complete the work which would be handled by the road crew.
>
> Any present provision in the Collective Agreements in conflict with the above will be amended or deleted as required.
>
> In addition, a letter, as follows, will be sent to the appropriate General Chairmen.
>
> General Chairmen UTU & BLE
>
> This has reference to the amendments to the Collective Agreement to permit yard crews to be used for a distance of up to twenty-five miles outside switching limits when operations necessitate.
>
> During negotiations, you were assured that it was not our intention to abolish road switcher assignments as the direct result of the implementation of this rule change.

Before Arbitrator Larson the Council entirely opposed any change, asserting that there was flexibility within the existing rules, whereby switching limits could be re-designated by agreement. In that regard the submission of the Council to Mr. Larson included, in part, the following:

> We consider the present rules and procedures to be more than adequate for the railways to meet their competition. The alternative, to accept the companies' position, would remove the long standing work jurisdiction safeguards and even in a very narrow application, as might be proposed by the railways such as emergent situations, would result in unnecessary and unresolvable disputes, detrimental to both parties. We will comment on this later in this brief.

…

It is our position that there are in fact rules in all of the running trades collective agreements, which will permit the degree of flexibility that will enable the railways to provide service.

For example Agreement 4.3, Article 103, paragraphs 103.1 and 103.2 reads:

103.1 The necessity of changing or re-establishing recognized switching limits, in order to render switching services required because of extension of industrial activities or territorial extension of facilities, must be recognized.

103.2 The present switching limits will be designated by general notice at all points where yard engines are assigned and will only be changed by negotiations between the proper Officer of the Company and the General Chairman. The concurrence of the General Chairman will not be withheld when it can be shown that changes are necessitated by industrial activities or territorial extension of facilities. Yard limit boards may or may not indicate switching limits.

The rules for CN Agreement 4.16 and the CP Eastern and Western lines collective agreements generally have the same application.

…

For example, the CP Eastern Lines General Chairpersons have made several local arrangements at the request of both CP Rail and the membership, to deal with unique circumstances at certain terminals. In resolving CP Rail's concerns on a local and individual basis, the members concerns were dealt with and CP Rails competitiveness was protected.

…

The railways have modified their demand during these negotiations, moving from the request to amend the rules to permit yard service employees to operate up to 40 miles outside switching limits to a relaxation of the rules to permit these employees to service those industries requesting highly time sensitive switching requirements. They have contended, in modifying their position that these occasions would be infrequent.

It is the Union's contention that any modification of the collective agreements is unnecessary and the existing rules were drafted, anticipating these infrequent occasions. While permitting the railways to provide this time sensitive service, the rules attach the penalty of an additional cost, not to preclude the ability to provide this service, but to present the railways from taking undue advantage and continually running yard service employees outside of switching limits.

The Council also opposed the rationale of flexibility to allow yard crews to go beyond switching limits to retrieve trains tied up for rest enroute. In that regard their brief to the arbitrator contained the following:

We foresee a yard crew being utilized to go outside switching limits to pull in trains that have been tied up enroute. Under the present rules, when a crew takes rest enroute, the railways have the option to leave the train in a siding until the crew's rest period has expired or they could order another crew to pick up the train and operate into the terminal.

We anticipate that the utilization of yard crews beyond switching limits, would erase what little leverage the operating crews have of getting into a terminal. Further, we believe this will result in less pressure to operate efficiently and road service employees being subjected to longer hours on duty. This has been one of the outcomes of such changes in the United States.

In his award of February 3, 1988 Arbitrator Larson did not discuss the merits of the parties' conflicting positions, nor did he provide any elaboration of his intention beyond the language which he awarded, and which is quoted above. In striving to interpret the meaning of that language, it appears to the Arbitrator that certain fundamental principles must apply. Firstly it must be appreciated that it was awarded within the context of the concerns expressed by the Company, as reflected in the language which it tabled before the Arbitrator. The employer expressed to the Arbitrator a number of itemized concerns including providing service to a time sensitive customer, rescuing disabled or stored trains and relieving trains whose crews are tied up for rest. Essentially what was being addressed by the Company was collective agreement language which would give it the flexibility to deal with incidental and unforeseen problems occurring within a relatively short distance of yard switching limits. Rather

than respond with a more tightly articulated list of exceptions, the Council chose to oppose generally any change. In the result, the better view must be that the arbitrator opted to accept the concerns and submissions of the employer and to reject the *status quo*, which was the Council's position.

In my view a close examination of the language does reveal something of the thinking and the intention of Arbitrator Larson. Significant is his circumscribing of the distance beyond switching limits which can be serviced by yard crews. By opting for a fifteen mile limit, as opposed to the twenty-five mile limit proposed by the employer, he nodded to some degree in the direction of the Council. The fifteen miles awarded by Arbitrator Larson is obviously a far cry from the forty miles originally proposed by the companies before Commissioner Stanley.

However, some insight into the nature of the work which might be assigned to yard crews is revealed in the fact that Arbitrator Larson identified a possible extension of the distance: "… to a maximum of twenty miles where the first siding extends to within twenty miles." In my view that qualification recognizes that yard crews can be utilized not only to service industrial customers within a distance of fifteen miles from yard switching limits, but that yard crews can also be dispatched to retrieve trains stored on a siding to a limit of twenty miles, a circumstance which could cover a disabled train, a stored train or a train whose crew has tied up for rest.

It is plain from the language handed down by Arbitrator Larson that he did not place any limits or qualifications on the kind of work which yard crews could be called upon to perform within the fifteen to twenty mile limit outside switching limits. He simply awarded that yard crews "… may be used" within the area so circumscribed. That he indicated that the amendment is "in order to provide timely transportation service" is itself language which tends to be far more general than specific. With the greatest respect to the contrary position ably argued by the Council's representative, that phrase does not give any clear indication that Arbitrator Larson seized on the sole exception of providing fast service to a time sensitive industrial customer. That narrow interpretation is, in my view, not supported by the specific reference to the possibility of extending the distance a maximum of twenty miles to accommodate the location of a first siding. The express reference to reaching the first siding in that circumstance must, I think, implicitly involve other circumstances such as the recovery of disabled or stored trains, or trains whose crews have booked rest.

Can it be said that the language so awarded cannot accommodate the final form of activity specified by the Company, namely advancing trains out of a yard for storage or staging in a siding to reduce yard congestion? I do not see how the language would prevent that kind of activity by yard crews. Bearing in mind that the amendment was directed to the mischief of inefficiencies and congestion occasioned by work boundaries traditionally associated with switching limits, it would appear to the Arbitrator that any purposive interpretation of article 8, clause (c) of the collective agreement must be taken as including within the concept of promoting "timely transportation service" the possibility of yard crews being utilized to advance trains, albeit within the mileage limits stipulated, to sidings as a means of relieving yard congestion.

Nor is the Arbitrator persuaded that the interpretation applied by the Company, which this award endorses, is tantamount to doing away with yard switching limits. While it does marginally extend the area within which yard crews can be assigned work, yard switching limits nevertheless remain an extremely important line of demarcation beyond which road crews cannot perform yard switching, subject to the closely circumscribed exceptions found within the collective agreement, such as work in relation to putting away their own train. In that context, and perhaps in others, yard switching limits remain an important line of demarcation for the purposes of assignments and work jurisdiction properly falling within the purview of yard crews.

Lastly, upon a broader examination of the provisions of article 8 of the collective agreement, it appears to the Arbitrator that the position argued by the Company is more consistent with the historic evolution of work outside switching limits for yard crews. Article 8, clause (b) provides as follows:

> **8 (b)** Yardmen allotted to other his regular duties will receive not less than schedule rates of pay for yardman. If a yardman is used as a Trainman road rates and conditions will apply.
>
> Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road trainmen are available, except in case of emergency or as provided in Clause (c). When yardmen are used in road service in excess of the miles outlined in paragraph one of Clause (c) of this Article under emergency conditions just referred to road rates and conditions will apply.

As can be seen from the foregoing, before the Larson award, the parties had turned their minds to the limits within which yard crews could be assigned to work which would otherwise be work in road service, which is to say work which did not fall within switching limits. Under the then existing provision yard crews could only be assigned outside switching limits where two conditions were met: an emergency and the unavailability of road crews to perform the work. Plainly, in a manner in keeping with the history of negotiations reviewed above, Arbitrator Larson did not choose to frame the language of article 8, clause (c) by reference to emergency conditions. On the contrary, he effectively allowed the proposal of the Company by defining a territory immediately outside switching limits within which yard crews could work, at yard rates of pay, for the broader and non-emergency purpose of, "… to provide timely transportation service". In the Arbitrator's view, for the reasons elaborated above, that phrase comports a general intention to allow yard crews to be engaged in assignments outside switching limits to achieve the kinds of operational efficiencies contemplated within the proposal advanced by the Company before Arbitrator Larson.

The present wording of the first sentence of the second paragraph of article 8(b) is also supportive of the interpretation advanced by the Company. It distinguishes the circumstance of an emergency with the separate conditions contemplated in clause (c), essentially providing that yardmen are not to be used in road service when road crews are available, "… except in case of emergency **OR** as provided in Clause (c)" (emphasis added). When that phrase is interpreted alongside the phrase "in order to provide timely transportation service" as found within clause (c) of article 8, the logical conclusion must be that the phrase concerning timely transportation service connotes something substantially different from emergency circumstances. On the whole, therefore, the Arbitrator is satisfied, having regard to the history, context and wording of article 8, clause (c) of the collective agreement that the interpretation advanced by the Company is correct.

For these reasons the grievance must be dismissed.

November 22, 2001

(signed) MICHEL G. PICHER
ARBITRATOR