CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3226

Heard in Montreal, Tuesday, 11 December 2001

concerning

CANADIAN NATIONAL TRANSPORTATION LIMITED

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

EX PARTE

DISPUTE:

Claim of owner-operator G. Daoust for 40 minutes pay at the "shunting" rate of $32.00 per hour.

UNION'S STATEMENT OF ISSUE:

On November 19, 1998, the grievor was required to perform various moves at the Monterm Intermodal Yard in Montreal in advance of picking up his container for delivery. The time involved was 40 minutes, which the grievor claimed under the "shunting" provisions ("manoeuvres") as provided in Standard Contract. His claim was denied, and he was paid instead at the "waiting" rate of $22.00.

The Union contends that the work involved met the requirements provided under the shunting provisions of Appendix B of the Standard Contract, and that the employee ought to have been remunerated accordingly. By failing to do so, the employer violated article 1.2 of the collective agreement. The Union requests a declaration to this effect and appropriate compensation. In the alternative, the Union requests a finding of estoppel in this regard during the term of this collective agreement.

The Company submits that the shunting provisions is not intended to be applied to any work performed at Monterm. Accordingly, the Company denies the claim.

FOR THE UNION:

(SGD.) A. ROSNER

NATIONAL REPRESENTATIVE

There appeared on behalf of the Company:

S. MacDougald	– Manager, Labour Relations, Montreal
I. Kelland	– Director, Retail Operations
S. Anthony	– Manager, Road Operations, Atlantic Canada
M. Sherwood	– Manager, Road Operations, MB,SK,MTL
J. Deschamps	– Service Officer, Retail Operations

And on behalf of the Union:

A. Rosner	– National Representative, Montreal
R. Johnston	– President, National Council 4000
C. Rainville	– Representative, Council 4000
S. Brazeau	– Owner Operator

B. Clark – Owner Operator
S. Lang – Owner Operator
G. Daoust – Grievor

AWARD OF THE ARBITRATOR

The issue in the case at hand is whether the moves required to be done by the grievor at the Monterm Intermodal Yard on November 19, 1998 constitute "shunting" payable at the specific rate provided for shunting within the collective agreement, or at the lower "waiting" rate. At issue is the application of Schedule B to the standard contract which governs the work performed by owner operators at Monterm, and it would appear at other terminals as well. It reads as follows:

ZONE RATED OPERATIONS

1. Zone rates shall be set out in the chart attached hereto as Schedule "B-1"

2. Waiting Time (per hour) $22.00

NOTE: Waiting time shall commence after 15 minutes has elapsed.

3. Shunting at customer's premises (per hour) $32.00

NOTE: Payment does not apply to the repositioning of equipment in order to spot the unit being handled or to pickup a unit for movement from the customer's premises.

The position of the Company is that sub-paragraph 3 of the zone rated operations provisions of Schedule B is intended to apply to shunting at a receiving customer's premises, and does not extend to the premises of CN's Intermodal operations, to the extend that CN is a customer of CNTL, the arm of the Company which has a collective agreement governing the terms and conditions of employment of the dependent contractors. The Union argues that CN is "a customer" and maintains that the practice has been consistent for many years at Monterm, as well as elsewhere in Canada, to pay the shunting rate for time expended on moving equipment within a CN intermodal yard, as was done by the grievor on the occasion in question. To that end it has filed in evidence documents showing the payment of shunting rates in CN yards across Canada. It is common ground that Mr. Daoust found himself required to move several pieces of equipment by reason of the fact that his load was initially placed on a defective chassis.

In the Company's view what occurs in various locations is better described as a mix of practices. To some extent it does appear that various approaches are taken, depending on the circumstances, the driver and the location involved. For example, it appears that full-time shunt drivers are employed at some locations, such as Winnipeg and Brampton. Also, at locations where owner operators may be required to do shunting within the CN intermodal facility they do not, it seems, always claim shunting rates, depending on the extent of the work and moves involved. On the other hand, the evidence would indicate that, as has been the past practice in Montreal, shunt rates have been claimed and paid for work of the type done by the grievor, within the Monterm Yard and elsewhere in Canada. A witness for both the Union and the Company elaborated on the practices in Maritime Canada, in particular at Halifax and Moncton. It would appear that in those locations shunting rates are paid for certain operations, such as physical labour which may arise in relation to scaling, as well as for yard moves of the type performed by the grievor in the instant case. When that evidence is considered, it does appear that the preponderant practice has been to pay the shunting rate, as the Union claims.

On the whole, therefore, the Arbitrator is more persuaded by the evidence of the Union with respect to practice generally, and to the meaning of that part of Schedule B which governs wait time and shunting. I must agree with the position of the Union that CN is itself a customer of CNTL, and must be viewed as falling within the language of the schedule.

It then becomes necessary to consider whether the note to the shunt rate, reproduced above, would govern the circumstances of the instant case. That note would provide that moves which may be made by an owner operator necessary to spot or pick up his own unit do not constitute shunting. In the case at hand it does not appear disputed that the grievor was not moving obstacles out of the way to pick up a unit, nor to drop one. In fact he was required to spend time hauling a bad order frame from one point to another, and to proceed to locate and pick up a further frame before proceeding to the movement of his unit. In that circumstance I would not consider that the work can be said to have pertained exclusively to the movement of his unit in the sense contemplated by the note.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the Company violated the collective agreement by failing to compensate the grievor at the shunt rate and directs that he be compensated accordingly forthwith.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR