CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 24

Heard at Montreal, Monday, February 14th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (GREAT LAKES REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

19 time claims submitted by spare yardman at Toronto in connection with the running of self propelled cranes.

JOINT STATEMENT OF ISSUE:

On various dates between March 30 and May 17, 1965 the Company operated self propelled cranes, manned by a yard foreman pilot, within the switching limits of Toronto Terminal. Spare yardman at Toronto submitted a total of 19 time claims for loss of earnings at the yard helper's rate of pay on the grounds that the Company violated Article 135 of the collective agreement when it did not use a full yard crew consisting of 1 yard foreman and 2 yard helpers on the cranes referred to above.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) W. G. FLOOD ASST. GENERAL CHAIRMAN	(Sgd.) E. K. HOUSE ASST. VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

R. St Pierre	Labour Relations Assistant, C N.R., Montreal
A. D. Andrew	Senior Agreements Analyst, C N.R., Montreal
R. J. Wilson	Senior Agreements Analyst, C.N.R., Montreal
J. Mansfield	Labour Relations Officer, C.N.R., Toronto

And on behalf of the Brotherhood:

W. G. Flood	Assistant General Chairman, B.R.T., Toronto
W. Kohut	Local Chairman, B.R.T., Toronto

AWARD OF THE ARBITRATOR

Briefly, this problem concerns whether Article 135 of the collective agreement governs the manning of self-propelled cranes. It reads, in part:

> "A yard crew shall consist of not less than one foreman and two helpers, but this will not interfere with the present practice otherwise, i.e., where a foreman and one helper are employed on an engine this will be continued until changed by agreement between ....."

Mr. Flood stated that because of previous decisions by this Arbitrator, he was reconciled to the fact that past history was not of determining importance. He therefore based his argument on the wording of Article 135, claiming it was broad enough so as to require crews specified therein on this type of equipment. This was necessary, he claimed, because switching and other phases of yardmen's employment were being carried out without regard to an increased crew.

The Uniform Code of Operating Rules defines an engine as follows:

> "A unit propelled by any form of energy of a combination of such units operated from a single control, used in train or yard service."

The words "used in train or yard service" bear emphasis when considering the use of the word "engine" in Article 135.

It was clear that despite Mr. Flood's bowing to the principle that past practice could have no governing importance unless ambiguity existed in provisions being considered, a variation in practice by officials at different points as to the crewing of self-propelled cranes had resulted in confusion and dissatisfaction among membership in the Brotherhood.

For the Company Mr. St Pierre submitted the machines in question are equipped for on-track operation. They are operated by qualified employees from the Company's work Equipment Department, not represented by the Brotherhood and not involved in this dispute. During the period in question, he claimed, the cranes were manned by a yard foreman pilot in the Toronto Terminal except on one occasion when a crew was used in conjunction with a locomotive. There a yard foreman and two yard helpers manned the locomotive.

Mr. St. Pierre described that "self-propelled work machines, such as these cranes, also include other types of construction and maintenance vehicles equipped for rail operation. They move without the need for a locomotive. These include tamping machines, switchbroom machines, pile drivers, weeding and sprayers.

Article 140 of the agreement provides, under the heading "Yardmen's Work Defined:"

> "Switching, transfers and industrial work, wholly within the recognised 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 trainmen from performing switching required....."

Mr. St. Pierre recalled that in the past the Brotherhood had made many attempts to force the Company to employ a yard foreman pilot on self propelled work machines operating in yards. In those instances it relied on Article 140. Because these attempts had failed, the Brotherhood had come to realize there is no provision in the wage agreement compelling the company to employ a yard foreman pilot on a self-propelled work machine operated in yards. Now they had changed to Article 135.

In one of the matters described His Honour, Judge J. C. Anderson held:

> "There is no provision in the collective agreement which makes it compulsory on management to assign a foreman pilot to a tamping machine when used in yards. Obviously this was the accepted interpretation of the rules by the negotiating committee of the Brotherhood when the request was made as part of the negotiations for the 1962 contract a rule which would compel the company to assign a foreman pilot when any self-propelled machine is used within switching limits and that when cars are handled by any self-propelled unit a full crew will be used."

In effect, Mr. St. Pierre urged, Judge Arderson had said the Company was not required by the agreement to crew self-propelled work machines.

As an indication that the Brotherhood appreciated that Rule 135 does not contain what is necessary to permit a favorable ruling on these claims, Mr. St. Pierre pointed to the fact that early in 1965 the Brotherhood had submitted a proposed memorandum of understanding containing provisions that when in work service the crew shall consist of not less than a conductor and one brakeman; that when used to move cars or switch cars from one track to another, the crew shall consist of a conductor and two brakeman; and that these provisions were to apply to yardmen when self-propelled equipment was used within terminal switching limits. This it was contended, indicated a realization by the Brotherhood that the agreement is silent on the matter of crewing self-propelled work machines in yards.

The basic argument for the Company was that Section 135 applies to bona fide yard crews where locomotives are used within switching limits for yard work. That Article speaks of a "yard crew" - not of any crew working in a yard, nor of a crew assigned to a piece of self-propelled work equipment operating in a yard. It was urged the term "yard crew" was traditionally been known to mean the crew of a yard engine. The mention of "an engine" in the fourth line of the Article corroborates this conclusion, Mr. St. Pierre maintained.

The only reference to self-propelled work machines in the agreement is contained in Article 86, which reads:

> "When self-propelled cranes are required to work on main line outside of Yard Limits a conductor will be placed in charge, except on lines where there is but one train a day operated in

each direction."

Obviously, because the crane on the disputed dates operated within yard limits, and this section applies only to road service, the orewl of the crane, is not governed by Article 86.

This provision, Mr. St. Pierre reasoned, contains for road employees the principle the Brotherhood hoped to establish for yard employee when it progressed previous disputes to arbitration.

A study of the applicable provisions shows that Article 135 describes a yard crew, with no description of their duties or scope of their activities. This information is to be found in Article 140. The Arbitrator was told that Article 135 had been in existence for the past thirty-seven years, with no significant amendment. Clearly these Articles were not designed to cover the operations of the existing complex, semi-automatic work machines used by maintenance forces today.

I am satisfied the scope of Article 135 must be limited to the operations described in Article 140. Those, in my opinion, do not include work for which a self-propelled crane is used.

Because there is nothing in the agreement specifically governing the size of the crew to be employed on self-propelled work equipment, other than in Article 86, the Company is free to mann these machines when otherwise engaged in a manner consistent with operational requirements.

This type of dispute is not uncommon in industry, due to the rapid advance and improvement made in various types of machinery in recent years. Such equipment drops in between existing guide lines represented by job descriptions or classifications and creates confusion until a proper pattern is created for them - not by arbitration, but by negotiation.

If any additional benefit or protection concerning this type of equipment is to be obtained, therefore, the effort must be made at the negotiating table.

That this necessity has been recognized by the Brotherhood is seen from the fact that in November, 1965, one of the demands served for a new contract contains this proposal:

> "Establish a crew consist on self-propelled equipment performing any switching or handling."

My finding, therefore, is that Article 135, in its present form, does not cover the tyle of equipment represented bu a self-propelled crane.

J. A. HANRAHAN
ARBITRATOR