CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 333

Heard at Montreal, Tuesday, January 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNlTED TRANSPORTATION UNlON (T)

DISPUTE:

Claims of Conductor F. Grieveson and crew, Capreol, May 23, 1969.

JOINT STATEMENT OF ISSUE:

On May 23, 1969 Conductor F. Grieveson and crew (Brakemen J. Cox and R. A. Walker) were ordered to report for duty at 2055 hours to operate freight train No. 204, Capreol to South Parry. Prior to leaving Capreol the crew was required to make tow set offs from their train. They first set off 20 cars behind 2 cars from the head-end of their train on track 6M, and then set off the next car, i.e. the 23rd car from the head-end of their train, on track 6M. This resulted in the 23rd car being placed first out on the east end of track 6M. The train departed at 2245 hours and crew went off duty at South Parry at 0150 hours.

For service performed on Train 204 Conductor Grieveson and crew claimed and were paid on a continuous time basis from 2055 hours to 0150 hours, that is, 153 miles at through freight rates of pay. In addition, these employees submitted time return each claiming an extra day's pay at yard rates under the provisions of Articles 35 and 140 of Agreement 4.16, contending tha the 30 minutes consumed in setting off cars at Capreol was yardmen's work.

The Company declined payment of the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. R. ASHMAN GENERAL CHAIRMAN	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C.N.R., Montreal
M. A. Matheson	Labour Relations Assistant, C.N.R., Montreal
L. B. ??cDonald	Master Mechanic, C.N.R., Capreol

And on behalf of the Brotherhood:

G. R. Ashman	General Chairman, U.T.U.(T), Toronto
J. B. Meagher	Vice Chairman, General Conmittee, U.T.U.(T) Belleville
F. R. Oliver	Secretary, General Committee, U.T.U.(T) Toronto
J. Vaughn	Local Chairman, U.T.U.(T) Toronto

AWARD OF THE ARBITRATOR

Article 140 of the collective agreement is as follows:

> "Yardmen's Work Defined -
>
> Switching, transfer and industrial work, wholly within the recognized 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 in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.
>
> At points where yardmen are employed and a spare list of yardmen or a joint spare list from which yardmen are drawn is maintained, yardmen will, if available, handle work, wreck, construction, snow plow and flanging service other than that performed continuous with a road trip in such service, and be paid at yard rates and under yard conditions."

It is apparent that the grievors did perform certain switching within the switching limits at Capreol. This would in general be yardmen's work, but it is said by the Company that it was "switching required in connection with their own train" , and that it was therefore proper for the grievors to perform it.

The switching consisted of the setting off the third to twenty second cars of their train, and then the twenty-third car of their train, in such a way that the twenty-third car was first out on the east end of track 6M. As such, it was in position to form part of another train. The Union acknowledges that it was proper for the grievors to have made the first move, setting off twenty cars, but that the second move was properly yardmen's work at least, it was not properly required of the grievors, although it could properly have been performed by the other train crew.

It may be observed that, since the other train crew could admittedly have made the move which would place the twenty-third car first out on track 6M, there is no question here of depriving a yard crew of work. The question remains, however, whether it was proper for the grievor's crew to do it. The work was two setting-off movements on one track. The result was that the making-up of another train was facilitated. Of course, there could be many cases where another train simply picks up a car or string of cars set off by an earlier

train. It does not necessarily follow that the work of setting-off those cars should properly be characterized as making-up the other train, even although that might be the result. More properly, that would onlu be one of the results, and the work could properly be described, from the point of view of the first crew, as switching in connection with their own train, or as putting their own train away.

In C.R.O.A. Case No. 11, a road crew was required to do some two hours' switching to place certain cars on their train and set off one from it. It was held that this was switching in connection with their own train. The placing of the car which was set off seems not to have been a matter of concern, and indeed the Arbitrator, in commenting on an earlier decision made by Professor Laskin, appears to suggest that switching done upon arrival at a terminal may be regarded as analogous to that done prior to departure, provided always that it is done in connection with a crew's own train. It was said that the putting of a train away "on a minimum number of tracks" involved a determination by management in pursuance of their obligation to carry on an efficient operation.

In the instant case the setting off of cars from the grievors train on one track, albeit in a particular order constituted, in my view, switching in connection with their own train. lt was therefore, work which was properly theirs to perform under the provisions of Article 140. I would add that this conclusion is reached having regard to the particular circumstances of the case. It is not necessary to determine the other issues which were dealt with in argument.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR