

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 479

Heard at Montreal, Tuesday, November 12th, 1974

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

The claim of assigned wayfreight Conductor J. E. Nott and crew, Penticton, for 100 miles at wayfreight rates for December 14th, 1972, account not being called to switch the Pope and Talbot Limited Sawmill, which is located at Mileage 1.9 on the Carmi Subdivision.

JOINT STATEMENT OF ISSUE:

Midway is an away-from-home terminal which is common to crews from Penticton operating via the Carmi Subdivision and crews from Nelson operating via the Boundary Subdivision. On December 14th, 1972, Conductor B. J. Frocklage and crew, an unassigned crew from Nelson, were called at Midway for 0600 for a trip from Midway to Nelson and prior to departure were instructed to switch the Sawmill located within the Midway yard limits at Mileage 1.9 on the Carmi Subdivision. The Carmi Subdivision comes under the former Penticton Freight Seniority District. Payment was allowed for the trip from Midway to Nelson, but, in addition, Conductor Frocklage and crew also submitted a claim for a separate days pay for 118 miles at freight rates for switching the Sawmill which is located at Mileage 1.9 on the Carmi Subdivision, which was declined. Conductor Nott and crew, who were laying in Penticton, submitted a claim for 100 miles at wayfreight rates because they were not called to perform this switching. The Company also declined payment of this claim.

The Union contends that the Company, by declining these two claims, has violated the provisions of Article 34, Clause (b) of the Collective Agreement, which reads as follows:

"(b) A Trainman or crew will not be run off subdivision or subdivisions to which regularly assigned except in case of shortage of a trainman or crew on another subdivision, or in case of emergency.

Shortage of a trainman or crew will not be considered to exist when there is a trainman or crew available that could be moved to the point required without incurring delay to operations."

FOR THE EMPLOYEES:

FOR THE COMPANY:

(SGD.) R. T. O'BRIEN
GENERAL CHAIRMAN

(SGD.) J. D. BROMELY
GENERAL MANAGER, O & M
PACIFIC REGION

There appeared on behalf of the Company..

P. E. Timpson	Assistant Supervisor, Labour Relations, CP Rail, Vancouver
J. Ramage	Special Representative, CP Rail, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien	General Chairman, U.T.U.(T)	Calgary
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AWARD OF THE ARBITRATOR

In this case, certain industrial switching on track coming within the Carmi Subdivision was performed by a crew whose home terminal was Nelson and who operate on the Boundary Subdivision. Were they then run off the subdivision to which they were regularly assigned, within the meaning of Article 34 (b). This was not a case of shortage of a trainman or crew nor a case of emergency. Thus, if the crew were run off their regular subdivision, it would appear that the grievance would succeed.

The switching in question, while on track within the Carmi Subdivision, was performed at Midway, which is an away-from-home terminal both for crews whose home terminal is Penticton, on the Carmi Subdivision, and for those whose home terminal is Nelson, on the Boundary Subdivision. Thus the Nelson crew was quite properly called at Midway, its away-from-home terminal. The question is whether it was properly required to perform switching at the Pope and Talbot Sawmill before departing for Nelson.

In the past, Penticton crews have performed such switching either while at Midway or in connection with runs between Penticton and Midway or Beaverdell and Midway. All these points are on the Carmi Subdivision, and there is no doubt that the work was properly assigned to a Penticton Crew. On the day in question, however, the Penticton crew were at Penticton. While there is no doubt that they could have been called to perform the work, another way of putting the question in this case is whether there was an obligation on the Company to do this. In the past, the Company has paid some similar claims, but the issue here is whether such payment is required under the collective agreement.

The switching in question, it is said, was performed within the Midway terminal, albeit to the west of the station building where the Boundary and Carmi Subdivision meet. The terminal extends from Mile 125.46 on the Boundary Subdivision, on the east, to Mile 2.38 on the Carmi Subdivision on the west. The Pope and Talbot Sawmill is at Mile 1.94 on the Carmi Subdivision, within the limits of Midway yard. It would appear that, if the Union's position is correct in this case, the Company would be required to call (or pay) a Penticton crew in respect of any train movements west of the west main track switch

(Mile 0.50 on the Carmi Subdivision), and call (or pay) a Nelson crew for any such movements east of the east main track switch, even where these movements were still within the confines of the yard. Of course, if movements were indeed performed outside the yard limits, this position would appear to be correct. The instant case, however, deals only with movements within the terminal.

A similar issue arose in Case No. 194. There, a Nelson crew prior to making a trip from Cranbrook to Nelson, (on the Nelson Subdivision), were required to lift a portion of their train from tracks in Cranbrook yard and which were on the Cranbrook Subdivision. The particular complaint was that the tracks in question were in the recently-extended portion of the Cranbrook yard, and which, previously, would have been outside the yard limits in which case the claim made in Case No. 194 would have been justified. The matter of the actual extent of the Cranbrook yard was not in issue in that case. The fact was that the track in question was within the Cranbrook yard, and the whole yard constituted the terminal. Work within the terminal, common to both subdivisions, could not, it was held, properly be said to be on another subdivision.

As in Case No. 194, it is my view that the issue turns on whether or not the work in question was performed within the terminal. Article 11 of the collective agreement contemplates performance of, and payment for such switching as part of initial and final terminal time.

The meaning of "terminal" however, is not clearly defined in the collective agreement, at least, not for the purpose of determining the area within which initial and final terminal switching may be performed. Reference to the outer main track switch is made in Article 11 (e) for the purpose of determining precise road miles in any trip. The outer main track switch, however, does not necessarily indicate the boundary of a "terminal". For the purpose of initial or final terminal switching, the yard switching limits would appear to be the appropriate limits for such work. This would appear to have been assumed in Case No. 194, where it was agreed that crews on one subdivision could properly perform work in connection with their own trains on another subdivision, "provided it was within the confines of the yard". In that case, as here, the yard had been extended. Now in the instant case the Union contended in argument that there had been no agreement, as required by Article 21, to an extension of yard switching limits. In the joint statement of issue, however, the sawmill in question is described as being situated "within the Midway yard limits". The instant case must therefore be decided on the basis of the joint statement, although the award herein does not involve any finding of fact in that regard, and is limited to the particular case as stated. The claim was not related to the type of work performed, but rather to the trackage on which it was performed. While I agree with the Union contention that the Penticton crew would be entitled to such work if performed west of the terminal, and while I agree as well that the extension of yard limits is a matter for agreement of the parties pursuant to the collective agreement, I am bound in this particular case by what is set out in the joint statement of issue. Thus I must conclude that the work was performed within the Midway terminal. There is no question, it may be noted, of conflict with any yard crew's work.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR