CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 753

Heard at Montreal, Tuesday, May 13th,1980

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

The Union claims the Railway has violated the Collective Agreement when a work train crew was ordered from Esker (Mile 286) to get a tied up switcher train at Cavanagh (Mile 296.9).

JOINT STATEMENT OF ISSUE:

On August 31st, 1979, at 05:40 hours the crew of switcher trai FS - 243 Southbound booked rest whzle their train was in a siding at Cavanagh. In accordance with paragraphs 16.03 & 16.04 of the Collective Agreement,the dispatcher offered to provide a satisfactory run to the destination point: (Esker 10.9 miles further). The switcher crew declined and instead dead-headed to Esker with incoming Southbound KL-323. Subsequently, the switcher train was moved to Esker by a work train crew.

The Union claims that a work train crew cannot engage into switcher duty and the Railway should have waited until the required rest period had expired to make such move by the switcher crew.

Therefore, a basic day (128 Miles) is claimed by the switcher crew: Messrs. Karkeck, Gauthier, Guillemette & Thomas.

The Railway maintains there was no violation of the Collective Agreement and rejects the grievance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. LAVOIE	(SGD.) R. BEAULIEU
GENERAL CHAIRMAN	MANAGER-LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin - Counsel - Montreal
R. Beaulieu - Superintendent, Labour Relations, QNS&L.Rly. Sept-Iles
R. P. Morris - Superintendent " " " "
B. Adams - Trainmaster " " " "
C. Nobert - Labour Relations Assistant " "
Marie Tardif - " " " " " "

And on behalf of the Brotherhood:

L. Lavoie - General Chairman, U.T.U.(T) - Sept-Iles, Que.

AWARD OF THE ARBITRATOR

This is a claim by a switcher crew that a work train crew performed work which they should have performed.

This claim raises two distinct questions. One is whether or not the switcher crew in question were entitled to perform the work which they claim. The other is whether or not it was proper for the work to be done by a work train crew. As to the second question, it may be noted that even if a work train crew ought not to have been given the assignment, it does not appear that any other crew actually lost work on that account. There was no other crew available at the time, and the grievors were in fact given an assignment and did not lose time.

As to the first question, it does not appear, in these circumstances at least, that the grievors had any specific entitlement to move train FS 243 Extra 228 South at the time in question. That had been their train, and at 0540 hours of the day in question they had given notice of their intention to book rest. At that time the train was on a siding at Cavanagh, Mile 296.8, the train being en route to Esker, Mile 285.3, but the track not being passable at Mile 293. Although offered a run to destination after the tracks were repaired, the grievors refused this and leaving their train on a siding, deadheaded to Esker, where they arrived at 0735 and booked rest. They were paid until that time. After their rest period was over, the crew was ordered for another train.

I was not referred to any provision of the Collective Agreement which would give the grievors some sort of proprietary right to the operation of train FS 243 Extra 228 South in the circumstances. They had left the train on a siding and proceeded deadhead to their destination. On arrival there, that tour of duty would appear to have ended. The Company would have to make what arrangements it could with respect to the movement of the train.

Such arrangements would have to be in compliance with the requirements of the collective agreement. Generally speaking, it would seem to be the effect of Article 34.11 that work train crews would not be assigned to such work. Without deciding whether or not this was an "emergency", it may be said first, that there was no other crew available at the time was brought in to Esker, and second, that it is at least questionable whether the bringing in of the abandoned train was in fact work in switcher service and so contrary to Article 34.11.

However this may be, the grievors themselves were not entitled to a basic day's payment simply because the train they had left was brought in by another crew while they were on rest or on another assignment. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR