CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1104

Heard at Montreal, Tuesday, June 14, 1983
Concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yard Helper L. K. Church for 8 hours' pay in respect of December 31, 1982.

JOINT STATEMENT OF ISSUE:

On Friday, December 31, 1982, an Engineer was called to turn the Northlander equipment at North Bay Shop and a Yard Foreman was called as pilot. The union contended that a yard crew of Foreman and Helper should have been called instead of a pilot claiming a violation of Article 12.2 of the Collective Agreement.

The Company denied the claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD) B. F. NEWMAN General Chairman	(SGD.) P. A. DYMENT, General Manager

There appeared on behalf of the Company:

A. Rotondo - Manager Labour Relations, ONR, North Bay
P. R. Harris - Assistant Superintendent, ONR, North Bay

And on behalf of the Union:

J. Sandie - Vice-President, UTU, Sault Ste. Marie
Ewart Fulford - Local Chairman, 1161, UTU (Bus), North Bay

AWARD OF THE ARBITRATOR

Article 12.1 provides that a yard crew shall consist of not less than one foreman and two yardmen. Article 12.1, however, modifies that provision to provide, in effect, for a reduced crew of a foreman and one helper. The Union's claim in the instant case is that such a crew - a foreman and one helper - ought to have been called. In fact, the Company called (apart from the engineman), only a yard foreman, to act as a pilot. That is, it did not call a yard crew, as such, at all. The issue is whether or not a yard crew should have been called. This depends on whether or not the work involved was "yard service", within the meaning of the Collective Agreement or

not.

It may be noted that the reference to "pilots" in the Collective Agreement, in Article 9.1, is to staffing "in addition to the regular crew". Whether or not a pilot was necessary or proper in the instant case is not in issue. The issue here is: what ought to have been "the regular crew"?, and that depends on whether the work performed was yard service or not.

In Article 3.11, the Collective Agreement provides as follows:

> "3.11 Yardmen's Work Defined
>
> (a) Yardmen will do all transfer, construction, maintenance of way, and work train service, exclusively, within switching limits (this not to interfere with work allotted to regularly assigned work train crews), and will be paid yard rates for such service.
>
> (b) Switching limits to cover all transfer and industrial work in connection with terminal.
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> (c) Temporary work train service, necessitating movement of trains outside of terminals, will be performed exclusively by road crews.
>
> (d) Assigned work trains delayed temporarily may be used for work in terminals such as distribution of material etc."

That provision is not a general definition of "yard service but simply clarifies, in respect of certain specific instances, what work is appropriate for yard crews, or for crews in other types of service, such as work train service. The Collective Agreement provides for various types of "service", as passenger service, freight service, yard service and various more special "service" including snow service and work train service. In general, there is no difficulty in distinguishing these, or in ascertaining which provisions of the Collective Agreement apply in respect thereto.

In the instant case, the Company appears to take the position that the work need not be performed by members of the bargaining unit at all. It is said, for instance,that the work may be performed by hostlers, as contemplated by Article 64.2 of the Collective Agreement between the Company and the Brotherhood of Locomotive Engineers. It may be that under that agreement work which might otherwise be required to be performed by enginemen may be performed by hostlers. That is the work of "handling engines" in certain limited circumstances. What is in issue here, however, is not the work of handling engines, but rather the train crew work of controlling movements. That is work which, in general, is performed by members of the bargaining unit.

The work in question has been, in almost all cases, perform by a yard crew. In the instant case, the work was required to be performed after the yard crew which, it seems clear, would have been assigned

to perform it, had gone off duty. The equipment in question, while properly described as a "unit train", is when in service as a train, to be staffed by a train crew, depending on the type of service. It was not being used as an engine, in my view, nor was it simply being moved within the shop area, as in Case No. 406. The turning of the train involved movements of the equipment over relatively extensive trackage and certain necessary switching; the engineman was recorded as having been called for an "extra yard" movement, and in my view that was correct.

What was done was, in my view, "yard service" and the staffing provisions of the Collective Agreement applied thereto. The crew required by Article 12 was not called, although it should have been. Accordingly, the grievance is allowed, and it is my award that the grievor's claim be paid.

J. F. W. WEATHERILL,
ARBITRATOR.