CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1187

Heard at Montreal, Tuesday, February 14, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor R. A. Watson and crew, Montreal, for 100 miles at yard rate of pay, November 1, 1982.

JOINT STATEMENT OF ISSUE:

On November 1, 1982, Conductor R. A. Watson and crew assigned to Passenger Train No. 60 reported for duty at Willowbrook for their regular assignment. The consist of Train 60 and 71 were coupled together and departed Willowbrook for Union Station, Toronto. At Union Station, the train was placed in Track 10 where it was separated by a carman to depart as two trains, in opposite directions, namely Train No. 60 eastward to Montreal and Train No. 71, westward to Windsor.

In addition to his regular earnings for his trip, Conductor R. A. Watson submitted a time claim for the work between Willowbrook and Union Station, claiming 100 miles at yard rate of pay under Article 41.1 of Agreement 4.16.

The Company declined the time claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) R. A. BENNETT	(SGD.) M. DELGRECO
General Chairman	FOR: Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
G. C. Blundell	- System Labour Relations Officer, CNR, Montreal
J. A. Sebesta	- Co-ordinator Transportation - Special Projects, CNR, Montreal
L. Whaling	- Trainmaster, CNR, Toronto

And on behalf of the Union:

R. A. Bennett - General Chairman, UTU, Toronto
G. Dumas -Local Chairman, UTU, Montreal
B. Leclerc - General Chairman, UTU, Quebec
W. G. Scarrow - General Chairman, UTU, Toronto
C. Cl?ment - Local Chairman, UTU, Montreal

AWARD OF THE ARBITRATOR

During the course of the parties' submissions the employer agreed that if the crew assigned to Passenger Train 70 had not accompanied Conductor Watson and crew assigned to Passenger Train 60 from the Willowbrook Yard in Mimico to Union Station, Toronto, then the "transfer" of Passenger Train 70 would be properly characterized as "yard work" under Article 41.1 of Agreement 4.16. That situation would be exactly the same as the situation described in CROA Case 203 and would justify the payment of a day's wages to the conductor and crew at the yard rate. Article 41.1 reads as follows:

> "41.1 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 employees in road service from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks."

To be perfectly clear had the crew attached to Passenger Train 70 proceeded directly to Union Station (perhaps by taxi) instead of reporting to the Willowbrook Yard and being transported by Conductor Watson and Crew on the coupled train then the grievors would have properly performed "yard" employees' work. That is to say the prerequisites of Article 41.1 in

> 1) transferring a passenger train,
> 2) within recognized switching limits and
> 3) at points where yardmen are employeed

would have been satisfied. The work performed would then be appropriately designated "as service to which yardmen are entitled" and would attract the appropriate premium.

It is common ground that on November 1, 1982, Conductor Watson and the crew assigned to Passenger Train 60 transferred both Passenger Train 70 and crew from Willowbrook to Union Station, Toronto. Accordingly the issue in this case turns on whether the mere fact that the crew assigned to Passenger Train 70 accompanied Conductor Watson and Crew sufficed to take the "work" out of the yardman's description?

I am not satisfied that it does. It seems obvious that if the crew attached to Passenger Train 70 was not required or needed to accomplish the task of transferring Passenger Train 70 to Union Station, then the essential character of the yardman's work performed by Conductor Watson and Crew remained unaffected. It was acknowledged that the crew assigned to Passenger Train 70 would still

be duty bound while being transferred to adhere to the rules and regulations of train operations. For example, the crew would be obliged to report any breach of the speed limit incurred by Conductor Watson's Crew. Nonetheles such adherence to the rules and regulations would not be required if the crew assigned to Passenger Train 70 were not on the train but proceeded by other means to Union Station. Indeed, I am satisfied that the crew assigned to Passenger Train 70 was merely "taxied" to Union Station by Conductor Watson and Crew. And, if that is the case, then I can discern no business reason for not characertizing the service performed by Conductor Watson and Crew in transferring Passenger Train 70 to Union Station as yardman's duties.

Accordingly the grievance succeeds. The grievor's shall be paid the premium they requested and I shall remain seized for purposes of implementation of my award.

DAVID H. KATES,
ARBITRATOR.