CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1272

Heard at Montreal, Tuesday, September 11, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for 100 miles at yard rates dated September 3, 1983 on behalf of Locomotive Engineer A. Taddeo for work performed on arrival at Thunder Bay under Article 3(c)(3) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On arrival at Thunder Bay on Train No. 482-31 on September 3, 1983, Locomotive Engineer A. Taddeo was instructed to place the two headend cars from his train on E.5 track. For this movement, Engineer Taddeo claimed 100 yard miles under the Collective Agreement.

The Company declined payment on the basis that the cars handled were rush cars which were being placed for future movement and accordingly payment is not required.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) L. F. BERINI	(SGD.) J. W. CHAMPION
General Chairman	FOR: General Manager

There appeared on behalf of the Company:

J. W. Champion	- Supervisor, Labour Relations, Prairie Region, CPR, Winnipeg
J. T. Sparrow	- Manager, Labour Relations, CPR, Montreal
R. J. Pelland	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

L. R. Berini	- General Chairman, BLE, Calgary

AWARD OF THE ARBITRATOR

In this case the grievor, Locomotive Engineer A. Taddeo, claims under Article 3 (c) (3), 100 miles at yard rates for the set off of two cars performed on his arrival at Thunder Bay on September 3, 1983.

There is no dispute that the grievor was required to pull the train

up the Eastward Main Train Track, set two cars ixmediately behind the engine destined Thunder Bay Intermodal Services, over into "E" Yard "half-track". The parties are agreed that unless the work performed by the grievor as aforesaid falls into the exceptions provided under Article 3 (c) (3) of the collective agreement then the company would be obliged to pay Mr. Taddeo the penalty as requested.

Article 3 (c) (3) reads in part as follows:

> "Where yard engines are on duty, Engineers will be considered released from duty in accordance with applicable rules after yarding their train except that they may be required to perform switching in connection with their own train to place cars containing perishables or stock for servicing or unloading or to set off rush or bad order cars as directed for future movement. Should they be required to perform other work when yard engines are on duty they will be paid a minimum of 100 miles at yard rates for such service. Where no yard engine is on duty, road Engineers will do necessary yard switching subject to release from duty in accordance with applicable rules."

The company claims that because the work involved pertains to intermodal-service the exemption provided for "rush" traffic should serve to protect it from payment of the penalty clause. The intermodal service provided by the company is designed to extend to its customers expedited delivery of freight. Its objective is also to maintain a competitive service vis a vis other carriers who might potentially attract the company's customers. The trade union has recognized the expedited nature of this service in its correspondence with the company where Mr. Berini writes:

> "I can agree partially.....that intermodal traffic is extremely time-sensitive, and could be considered in the "rush" category."

It appeared from the evidence and the submissions of the trade union that the six to seven hour delay by the company in moving the cars in question "from track E.5 to the intermodal service yard" betrayed any notion that the freight contained in the cars was truly the subject of "rush traffic". In this regard the company provided a reasonable explanation for the delay which the trade union did not seek to challenge in these proceedings.

The uncontested evidence appears to suggest that the intermodal traffic service provided by the company is prima facie "time-sensitive" and should fall into the "rush category" exemption. Unless the trade union can establish that the company for some untoward purpose is thwarting the entitlements of the employees under the collective agreement by disguising intermodal traffic as something other than what it is the exemption from payment of the penalty provided under Article 3 (c) (3) should prevail. And, indeed, merely because a protracted delay in effecting service is caused by an unavoidable contingency beyond the company's control is

no reason to undermine the intrisic nature of the intermodal traffic service as "time-sensitive".

Moreover, although the freight contained in the cars in question on the occasion herein described were not "perishables" or items that required refrigeration I am satisfied that "other stock" was contemplated by the exemption provision contained in Article 3 (c) (3) of the collective agreement. Accordingly, it is not the type of freight that necessarily governs the company's entitlement to the exemption under "rush" traffic , but, rather the nature of the freight service that is being provided the customer.

For all the foregoing reasons the grievor's claim for payment of the penalty is rejected.

DAVID H. KATES,
ARBITRATOR.