

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1407

Heard at Montreal, Thursday, September 12, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)  
(Pacific Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor L. A. Faraday and crew,  
Coquitlam, for a minimum days pay at the  
through freight rate for running off their  
assignment on April 6, 9, 13, 18, 20, 26,  
May 1, 2 and 9, 1984.

JOINT STATEMENT OF ISSUE:

The No. 10 Road Switcher Assignment was bulletined on  
March 28, 1984 as follows:

"The following assignments are classified under the  
provisions of the Road Switcher Rule to perform all  
services required within the area defined by the  
Rules on Cascade and/or Westminster Subdivision.  
All starting points - Coquitlam".

The assignment involved in this dispute was listed as the "10th  
Coquitlam Road Switcher. Six day assignment. Saturday off.  
Starting time 2200". The assignment was bulletined in this manner to  
comply with the requirements of Article 42, Clause (a) which reads in  
part as follows:

"Assignments, other than work train, will be  
bulletined specifying the home terminal, initial  
and objective terminal for each trip, territory  
over which the assignment is to perform service,  
starting time and days of operation".

If assigned crews are used to perform service off their assigned  
territory, they will be compensated in accordance with the provisions  
of Article 42, Clause (f) which reads as follows:

"When an assigned crew is used outside its  
assignment off its assigned territory, it will  
be paid at schedule rates and conditions for

such service in addition to and irrespective of the compensation provided for the assigned service".

The service for which claims were made as listed above, in accordance with the provisions of Article 42, Clause (f), was performed on the Burlington Northern's Pacific Subdivision No. 2, which forms no part of the Cascade or Westminster Subdivision nor is it on CP trackage.

The Union contends that the territory over which the assignment is to perform service must be specified in accordance with the provisions of Article 42, Clause (a). The Company was entitled to Bulletin the assignment to include the Pacific Subdivision where the work was performed, but did not do so. By requiring the crew to perform service off their assigned territory, payment must be made in accordance with the provisions of Article 42, Clause (f). The Union requests that the claims be paid.

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It is the position of the Company that on the days in question, Conductor Faraday and crew worked within the acceptable road switcher radius as contained in Article 18 (a). Their assignment on these days operated on the Westminster Subdivision, the territory on which they were bulletined to work. The movement over Burlington Northern trackage was work incidental to switching an industry located off the Westminster Subdivision and does not therefore constitute work off the assigned territory for their assignment. Accordingly the claims were declined.

FOR THE UNION:

(SGD.) J. H. McLEOD  
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL  
General Manager  
Operation and Maintenance.

There appeared on behalf of the Company:

R. T. Bay - Asst. Supervisor, Labour Relations, CPR,  
Vancouver  
B. P. Scott - Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

J. H. McLeod - General Chairman, UTU, Calgary  
P. P. Burke - Vice-President, UTU, Calgary  
L. Schillaci - Secretary, UTU, Calgary

AWARD OF THE ARBITRATOR

The Joint Statement of Issue adequately summarizes the details that precipitated the parties' dispute. In my view Article 18 (a) provides a complete answer to the trade union's grievance. It reads as follows:

"Assignments operating on turnaround basis within an area of 30 main track miles from the outer main track switch or designated point in any direction from the initial starting point will be classified and assigned as Road Switcher Service."

Once Conductor Faraday's bulletin designated "the starting point" of his assignment as Coquitlam then by operation of Article 18 (a) all assignments that were pertinent to his work jurisdiction would become his responsibility "within an area of 30 main track miles... in any direction". As a result when the grievor's assignment sheet defined the territorial scope of his assignment to be within "the area defined by the rule," he was thereby duty bound to perform, without receipt of a premium, the tasks that fell within that territory.

It is simply an erroneous assumption to conclude that because some work assignments within the territorial scope of the grievor's work jurisdiction were described in the bulletin to be "on Cascade and Westminster Subdivision", it thereby excused the grievor from performing all the tasks that would normally and regularly be expected of him. These cannot be considered as words of restriction but rather should have been perceived as words of clarification. Unfortunately, the employer's language resulted in creating an ambiguity that was not anticipated. Indeed, the trade union conceded that a work assignment bulletin that merely defines the appropriate territorial jurisdiction and says nothing more is all that is required for purposes of employer compliance with Article 42 (a) of the collective agreement.

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Since I cannot agree that the phrase seized upon by the trade union represents words of restriction, I am satisfied that the disputed work assignment given the grievor was well within his territorial jurisdiction.

Accordingly the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.