CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1450
Heard at Montreal, Tuesday, January 14, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yard Foreman T. J. Leinweber and Yardman G. E. Larson, Edmonton, for a day's pay under yard rates and conditions account a road crew performing yard switching at the Intermodal Yard, Edmonton, Alberta on January 13th, 1985.

JOINT STATEMENT OF ISSUE:

Article 7, Clause (d) of the Yardmen's Collective Agreement provides in part as follows:

> "Yardmen will have preference of work and promotion according to seniority in the one or more yards under their respective Superintendents".

On January 13th, 1985, a road crew, after arriving at Edmonton, their final terminal and while en route to the yard at which they would be released from duty, were required to switch cars from their train and spot them for unloading at the Intermodal Yard. This Intermodal Yard is within the bulletined designated switching limits at Edmonton. The road crew were paid for all time on duty after arrival at Edmonton, including the switching of the Intermodal Yard as final terminal time.

The Union contends that the switching and spotting of such cars, as well as all other switching and spotting that is performed wholly within yard switching limits where Yardmen are employed, and within the hours of duty of such Yardmen, is work to which Yardmen are entitled in accordance with the provisions of Article 7, Clause (d).

The Union contends that the switching performed by the road crew in this instance is work that should properly have been assigned to a yard crew and the claim submitted by Yard Foreman Leinweber and Yardman Larson is justified.

The Company contends that, in the absence of a Scope Rule, there is no limitation on the nature of the switching which road crews may be required to perform on final terminal time in accordance with Article 11 (h). Such work cannot be classified solely as yard work and was properly assigned to the road crew. Messrs. Leinweber and Larson

have no claim to the work performed and their claim was denied.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J.. H. McLEOD General Chairman	(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
L. A. Clarke	- Manager, Labour Relations, CPR, Montreal

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The issue raised in this case is whether the grievors, as Yardmen in the company's employ at its Intermodal Yard at Edmonton, are entitled to a "preference" with respect to "switching" duties involved in "the setting off" of a freight train within the confines of the yard.

The company argues that the "Roadmen" during their final terminal time, at its discretion, have just as substantive an entitlement to perform said switching work.

The two provisions of the collective agreement governing the parties' dispute read as follows:

> "7 (d) Yardmen will have preference of work and promotion according to seniority in the one or more yards under their respective superintendents.
>
> "11 (h) Final Terminal
>
> Trainmen will be paid final terminal time, including switching, on the minute basis at 12-1/2 miles per hour at rate of class of service performed from the time locomotive reaches outer main track switch or designated point at final terminal; should train be delayed at or inside semaphore or yard limit board, for any reason, or behind another train similarly delayed, time shall be computed from the time train reached that point until the train is yarded." (Emphasis added)

It is common ground that the "switching" work claimed on behalf of the grievors consumed approximately 55 minutes of what constitutes

the Roadmen's final terminal time. The claim made herein, if successful, would entitled the grievors to be paid a full days pay at the Yardman's rate.

In resolving this particular dispute I am satisfied that both Articles 7 (d) and 11 (h) contemplate "overlapping" jurisdictions with respect to the performance of the "switching" duties of the nature discharged by the Roadman. Article 11 (h) expressly and without restriction enables Roadmen to engage in "switching" work during final terminal time that is required to set off their train at a yard. By the same token, a Yardman may have a preference with respect to that work in accordance with his order of seniority in the event the employer should elect not to make the assignment to the Roadmen involved.

The trade union wishes to interpret the phrase "preference of work" in Article 7 (d) to connote a work protection provision ensuring the Yardman's "exclusive" jurisdiction. I simply must disagree. Firstly, Article 11 (h) specifically delineates the very situation as herein described where such "switching" work when related incidentally to the Trainman's setting off his train during final terminal time to be work he or she is entitled to perform. And, secondly there is absent in Article 7 (d) language that would protect the Yardman|s jurisdiction by limiting to narrow situations, as the union described them, where Article 11 (h) would enable Roadmen to perform the same work.

For example, these points were clearly demonstrated by the trade union during the hearing. It was conceded that Roadmen may do "switching" work for set off purposes at yards where there are no Yardmen. However, Article 11 (h) simply does not contain any such restriction. Rather, if the trade union was as consistent in its claim that "switching" work of the nature herein described was the exclusive domain of the Yardmen then it surely should have insisted that the company is duty bound to assign such Yardmen to these unmanned yards.

Accordingly, it seems apparent that the trade union's position, as herein described, demonstrated the inconsistency and futility of the interpretation of Article 7 (d) as a work protection provision.

For all the foregoing reasons this grievance is denied.

DAVID H. KATES,
ARBITRATOR.