

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1580

Heard at Montreal, Wednesday, November 12, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claims of various Niagara Falls based train crews for payment at yard rates of pay when performing service at Port Colborne, Ontario on various dates commencing April 30, 1984.

JOINT STATEMENT OF ISSUE:

On April 19, 1984, the yard assignment at Port Colborne, Ontario was abolished. Beginning April 30, 1984, Niagara Falls based trainmen on Train 567, a Road Switcher operating out of Port Robinson, Ontario, claimed payment at yard rates of pay for each tour of duty during which they were required to perform work at Port Colborne. The Company paid each such tour of duty at road switcher rates of pay.

The trainmen in question, have claimed the difference between yard and road switcher rates contending that Article 2.8 of Agreement 4.16 mandates the payment of yard rates.

The Company has declined payment.

FOR THE UNION:

(SGD.) R. A. BENNETT  
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO  
FOR: Assistant Vice-President  
Labour Relations.

There appeared on behalf of the Company:

J. Bart	- System Labour Relations Officer, CNR, Montreal
D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
P. G. Drew	- Assistant Superintendent, CNR, Hamilton
B. J. Mahoney	- Transportation Officer, CNR, Toronto

And on behalf of the Union:

T. G. Hodges	- Vice-General Chairman, UTU, Toronto
M. P. Gregotski	- Local Chairman, UTU, Niagara Falls

At the request of the parties, the Arbitrator adjourned the hearing to December.

On Tuesday, December 9, 1986 there appeared on behalf of the Company:

J. B. Bart - System Labour Relations Officer, CNR, Montreal  
D. W. Coughlin - Manager Labour Relations, CNR, Montreal  
C. St. Cyr - System Labour Relations Officer, CNR, Montreal  
M. C. Darby - Coordinator Transportation, CNR, Montreal  
R. J. Lopatriello-Trainmaster, CNR, Toronto

And on behalf of the Union:

T. G. Hodges - Vice-General Chairman, UTU, Toronto  
R. A. Bennett - General Chairman, UTU, Toronto  
R. Byrnes - Local Chairman, UTU, Capreol  
R. J. Proulx - Vice-President, UTU, Ottawa

#### AWARD OF THE ARBITRATOR

The Union's claim appears to turn entirely on its position that the agreement of August 7, 1974 continues in effect to the present time. That agreement contains, in part, the following provisions:

(1) (b) The former N.S. & T. yard assignment at Colborne is hereby abolished and a Road Switcher assignment assigned...

(h) Rates of pay and overtime conditions for the Road Switcher assignment outlined in Item (1), (a) and (b), shall be defined under the yard service provisions of the applicable agreements.

The Road Switcher assignment described in the foregoing agreement was, in fact, established on September 23, 1974, designated as Train 724. That assignment was abolished on September 4, 1976. After a close review of the material filed and the extensive submissions of the parties, the Arbitrator must agree with the interpretation advanced by the Company. The agreement of August 7, 1974 was a specific arrangement. It plainly contemplated that the yard rates of pay established in paragraph (h) were payable to the Road Switcher assignment established in sub-paragraph (b), in substitution of the former N.S. & T. yard assignment. When that Road Switcher assignment was terminated in 1976 the rights negotiated in the agreement of August 7, 1974 ceased to operate.

The Arbitrator cannot find that Train 567, working as a Road Switcher assignment out of Port Robinson, is effectively performing the work of the Road Switcher assignment which was abolished in 1976. It does not appear, moreover, that the Union advances any such contention. Its position is that the agreement of August 7, 1974, and specifically sub-paragraph (1) (h) is to have general application to any Road Switcher assignments operating in Port Colborne. For the reasons expressed, having regard to the language of the 1974 agreement, the Arbitrator cannot sustain so broad an interpretation. For these reasons the grievance must be dismissed.

MICHEL G. PICHER,  
ARBITRATOR.