CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1590

Heard at Montreal, Tuesday, December 9, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for payment of yard rate of pay on behalf of various Trainmen assigned to Road Switcher service on Train Nos. 594, 598, 599, operating out of Capreol, Ontario.

JOINT STATEMENT OF ISSUE:

On 28 March 1983, the Company established two Road Switcher assignments designated as Train Nos. 594 and 599, in addition to the existing Road Switcher Train No. 598. Each of these assignments is home terminalled at Capreol and operates within a 30-mile radius which territory includes the open yard at Sudbury.

The Union contends that the employees assigned to these assignments are entitled to payment at the yard rate of pay in accordance with Article 2.8 of Agreement 4.16.

The Company has declined payment of the yard rate of pay.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) TOM HODGES FOR: General Chairman	(SGD.) D. C. FRALEIGH Assistant Vice-President Labour Relations.

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
- D. J. Nunns - Trainmaster, CNR, Capreol

And on behalf of the Union:

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

AWARD OF THE ARBITRATOR

It is well established that when a Collective Agreement provides for certain defined job classifications, employees performing the "central core" of the work of a higher classification are, notwithstanding their job title or other formalities, entitled to be paid at the higher rate (See Canada Valve Ltd., (1977), 16 L.A.C. (2d) 258 (Burkett) and Dupont of Canada Ltd., (1979). 24 L.A.C. (2d) 121 (Kennedy). The instant Collective Agreement specifically provides, in Article 26, that road service employees manning yard assignments in open yards are to receive rates of pay for yard service. Article 2.8 of the Collective Agreement, which is the basis of the grievance, further provides as follows:

> "Ordered for Switching Service
>
> 2.8 Employees ordered for switching service
> (a) at points where Yardmen are not employed;
> (b) on assignments were yard rates are now in effect;
> (c) to relieve Yardmen or to perform Yardmen's work as defined in Article 41 at points where Yardmen are employed;
> will be paid the rates of pay, shift differentials and overtime rates pursuant to Articles 3 (Rates of Pay - Yard Service) and 34 (Overtime)."

It is uncontroverted that at all materials times, although they have been classified as road switchers, based in Capreol, outside the boundaries of the Sudbury Yard, the crews manning trains Nos. 594, 598 and 599 performed work previously done by yard service employees. This they did regularly and continuously for the great bulk of their working time. They were not paid at yard service rates.

The Company maintains that because Article 26 does not specifically incorporate Article 41 as a provisions which applies to road service employees manning yard assignments in open yards the grievance is without merit. The Arbitrator cannot agree. Article 41 provides, in part as follows:

> "Yardmen's Work Defined
>
> 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."

The foregoing provision plainly delineates the jurisdict ional rights of yardmen. It would obviously be problematic to ascribe to road service employees the exclusive jurisdiction of yardmen under the guise of Article 26. It deals only with the Collective Agreement entitlement of road service employees manning yard assignments in open yards. In my view the omission of Article 41 from that list of protections is logically inevitable, and cannot be construed as effectively abrogating the right of road service employees to the protections of Article 26 including yard service rates of pay while

manning yard assignments in open yards.

The material establishes that the employees in question performed yardmen's work as defined in Article 41.1 of the Collective Agreement. I cannot give any weight to the submission of the Company that merely because the assignments originated in Capreol and were formally classified as road service assignments, Article 2.8 as no application. To so conclude would reduce to the vanishing point the elaborate distinction between road service and yard service clearly established within the Collective Agreement. As was stated in CROA Case 1124;

> "It is the Company's prerogative to designate the type of service it requires to have performed. It must, however, use the correct designation for the service required. It is the service which controls the rate of payment. In this case the grievors were called for their regular freight service run, and that was in fact the work performed. The Collective Agreement contemplates that there may be circumstances where a crew, called for one type of service, performs additional work as well. That is the case here."

In the instant case the employees are entitled to be remunerated at the rate appropriate for the work which they in fact performed. The Arbitrator is satisfied that this was not switching required in connection with their own train. It was, on the contrary, yard switching as contemplated in Article 41.1 of the Collective Agreement. Whatever formalities may have been adopted, the grievors were in substance "ordered for switching service" as contemplated in Article 2.8 of the Collective Agreement and were therefore entitled to the remuneration claimed by the Union. The grievance must therefore be allowed, and the grievors are to be compensated accordingly. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER,
ARBITRATOR.