CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1656

Heard at Montreal, Wednesday, June 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for payment of 100 miles at yard rates of pay on behalf of various trainmen assigned to Road Switcher Service on Train No. 528, home terminalled Montreal.

JOINT STATEMENT OF ISSUE:

Between February 7 and April 28, 1986, the crew assigned to Road Switcher No. 528 were required to leave the cars of their train in one track and their engine and caboose in another track.

The Union contends that the Company, in requiring the grievors to put away the caboose on another track, is in violation of Article 41 of Agreement 4.16 and the grievors are entitled to 100 miles at yard rates of pay for that work.

The Company has declined payment.

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

There appeared on behalf of the Company:

D.W. Coughlin	- Manager Labour Relations, Montreal
J. Bart	- System Labour Relations Officer, Montreal
M.C. Darby	- Coordinator Transportation, Montreal
P.E. Blanchette	- Superintendent Transportation, Montreal
J. Pasteris	- Labour Relations Officer, Montreal

And on behalf of the Union:

R.A. Bennett	- General Chairman! Toronto
T.G. Hodges	- Vice-General Chalrman, Toronto
G. Scarrow	- General Chairman, Sarnia

G. Bird - Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The Union relies on the contents of a letter dated May 10, 1979 in support of its interpretation of Article 41.1 of the Collective Agreement. That Article provides as follows:

> Article 41 - 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 the caboose) on a minimum number of tracks."

It is not disputed that for reasons of security and the prevention of vandalism, cabooses have traditionally been placed on a designated section of track within a yard when a train is put away. The letter of May 10, 1979 arose as a result of a concern by the Union that upon arrival at a terminal road crews were being required to marshall cars, thereby performing the work of yard crews. Tha letter issued in the following terms:

> Gentlemen:
>
> During national negotiations which culmInated in the signing of the Memorandum of Settlement concerning Agreement 4.16 on March 15th, 1979 you asked that we provide you with a letter clarifying the intent of the words "...a minimum number of tracks" which appear in paragraph 119.1 of Agreement 4.16.
>
> During our discussions on the matter you confirmed that the Union was not seeking to change the accepted practice whereby the appropriate Company officer in charge of the operation of a terminal would designate the track on which a train is to be yarded. Your concern was that in the application of the provision quoted above some Company officers were instructing trainmen to marshall cars on arrival at terminals where yard engines are on duty.
>
> The Company informed you that if a trainman is instructed to yard his train in a particular yard track and such track will not hold the entire train, it would therefore be necessary to double-over the surplus cars to another track. In making the double-over it was not the intent of the rule that a trainman marshall the double-over by setting over

for example 10 cars for one destination in one track and 10 cars for another destination in another track. It is the intent of the rule to provide that the surplus cars would be doubled over, if possible, to one other track. However, if due to yard congestion there is insufficient room to double-over all cars to one track it may be necessary to double-over to more than one track in order to put the train away.

We believe that generally speaking the provisions of Article 119 of Agreement 4.16 are applied within the above intent. However, we hope that the above clarification will clear up any misunderstandings in the application of such rules.

Yours truly,

Assistant Vice-Predident
Labour Relations

The terms of the foregoing letter found their way into the Collective Agreement in the form of Article 7.9 (d) which now provides:

(d) In the application of the provisions of paragraph 41.1 and 41.2 of Article 41, (Yardmen's Work Defined), when employees in road service are instructed to yard their train in a particular track at a terminal and such track will not hold the entire train, they will double over surplus cars to another yard track or, in cases of yard congestion where there is insufficient room to double over all cars to one track, it is necessary to double over to more than one track to effectively yard the train.

NOTE: In the application of the foregoing sub-paragraph (d) of this paragraph, employees will not be required to marshall trains upon arrival at terminals (e.g.: setting over 10 cars for one destination to one track and 10 cars for another destination to another track).

The Union does not dispute that putting away the engine is work in connection with a road crew putting its own train away. The instant grievance arises because the Company required the grievors to put away the caboose on another track.

The awards issuing from this office have long held that the putting away of the caboose is properly the work of a road crew (See C.R.O.A. Cases # 11 and 12). Against that background what meaning can be given to the words "including the caboose" specifically included in Article 41.1 of the Collective Agreement? There is no specific mention of the putting away of a caboose either in the letter of May 10, 1979 or in the language of Article 7.9 (d), which purports to implement the understanding reflected in that letter. In these

circumstances the Arbitrator must conclude that the parties did not intend to alter the general practice, as reflected in C.R.O.A. Cases 11 and 12, by which incoming road crews have traditionally been required to put away both the engine and caboose from their train. I am satisfied that, had the parties intended any specific departure from the practice of road crews putting away a caboose on a separate track, they would have made some specific provision in that regard. On the contrary, the more specific language of Article 41.1 expressly contemplates that it is the responsibility of road crews to put away their caboose. The provisions of Article 7.9 (d) cannot be construed as altering what was decided in C.R.O.A. Cases # 11 and 12.

I cannot, therefore, accept the intrepretation advanced by the Union. For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR