CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1659

Heard at Montreal, Wednesday, June 10, 1987

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Time claims favour Yardman E.A. Willoughby of Thorton Yard, B.C., claiming numerous shifts from February 16, 1985, under the 'make whole' principle as outlined in the Company's letter on pages 124 and 125 of Agreement 4.2.

JOINT STATEMENT OF ISSUE:

Yardman Willoughby applied for Yardmaster training as advertised on Bulletin No. 136 dated November 2, 1984. The training course commenced on January 7, 1985, and after completing one week, Yardman Willoughby was removed from the course.

The Union contends that Yardman Willoughby has been unjustly denied a seniority date as a Yardmaster in violation of Article 140 of Agreement 4.3 and Articles 2.1, 3.1, and 17.1 of Agreement 4.2 and the time claims should be paid and his seniority be established in accordance with Agreement 4.2 on the date he was appointed by bulletin as established by past practice.

The Company declined the claims and denied the Union's contention.

| FOR THE UNION: | FOR THE COMPANY: |
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| (SGD.) L.A. OLSON<br>General Chairman | (SGD.) D.C. FRALEIGH<br>Assistant Vice-President<br>Labour Relations |

There appeared on behalf of the Company:

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| J.R. Hnatiuk | - Manager Labour Relations, Montreal |
| D. Lord | - System Labour Relations Officer, Montreal |
| M.C. Darby | - Coordinator Tranportation, Montreal |
| R. Maze | - General Yardmaster, Edmonton |
| B. Laidlaw | - Labour Relations Officer, Edmonton |

And on behalf of the Union:

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| L. Olson | - General Chairman, UTU/CN Lines West, Winnipeg |
| C. Lewis | - Secretary/GCA, UTU/CN Lines West, Vancouver |
| E.A. Willoughby | - Grievor, UTU/CN Lines West, Vancouver |
| G. Scarrow | - General Chairman, UTU/CN |
| R.A. Bennett | - General Chairman, Toronto |

AWARD OF THE ARBITRATOR

After careful review of the material the Arbitrator has some difficulty with the position of the Union. While it is true that Bulletin #136 indicated that the Yardmaster training course would be provided "for successful applicants who have never worked as Yard--masters ...", and that the grievor did have some, albeit limited experience as a Yardmaster, by his own conduct he waived any variance from the Bulletin by the Company. It appears that Yardman Willoughby did not object to taking the training course, for the entirety of which he would be paid. The training program consisted of an initial one week period of classroom training which ended on Friday, January 11, 1985. It was to be followed by two weeks of field training.

Prior to taking the field training all of the course participants were required to undergo what was perhaps unfortunately called a "screening test". This was not in fact a test, as it was not to be used for the purposes of evaluating the participants as to whether they passed or failed the course. Rather it was in the nature of a survey, conducted purely to give the Company a reading of the achievement level of course participants, information which the Company needed to establish true qualification tests for future applicants to Yardmaster positions. While it appears that there may have been some initial confusion in the grievor's mind as to the purpose of the test, it is clear that he was subsequently made fully aware that the result of the test was not to be held against him, and that it could not affect his entitlement to a Yardmaster's position pursuant to the Bulletin. He nevertheless refused to undergo the test when it was indicated to him that he would be required to place his name on it.

The grievor's refusal to take the test was plainly in violation of his obligation to the Company. Even if he believed that the administration of the screening test was wrong, his proper course of action was to adhere to the general dictates of the "work now - grieve later" rule. In other words, had the result of the test in fact been used at a later time in some way adverse to the grievor, he had every opportunity to use the grievance procedures under the Collective Agreement to remedy any violation of his rights. He chose, instead, to refuse to take the test. In consequence of his actions the Company removed him from the course.

The result of that action was plainly serious for the grievor, whose opportunity for unassigned Yardmaster's work was forfeited. Although the wording of the Bulletin raises serious questions about the Company's ability to require the grievor to take the training course, since he did have prior experience as a Yardman, as noted above I must conclude that he waived any right to object to that requirement by submitting himself to the course. Having done so it was not open to him to decline to participate in any reasonable

aspect of that course, including the achievement survey, subject to whatever protections he might seek through the grievance procedure in the event that he was adversely affected.

As a general rule, a training course cannot be conducted in the manner of a debating society. Nothing in the Collective Agreement prevented the Company from requiring the participants in the course to submit to the achievement survey. Because of the grievor's refusal to do so, the Company was entitled to view the grievor as having declined to comply with the requirements of the course and to treat him as removed from the course from that point forward. That was an administrative determination within the prerogative of the Company. In the Arbitrator's view, it cannot be characterized as a disciplinary demotion imposed upon the grievor without adherence to the investigatory provisions of the Collective Agreement, as alleged by the Union. While the Arbitrator can appreciate the frustration that underlies this grievance, and makes no comment on the advisability of the course of conduct followed by the course director, in all of the circumstances no violation of the Collective Agreement is disclosed and the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR