CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1809

Heard at Montreal, Tuesday, 12 July 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for the difference between the yard rate and the through freight rate of pay on behalf of various Locomotive Engineers, Hamilton, Ontario.

JOINT STATEMENT OF ISSUE:

Between 23 February and 21 March 1987, Hamilton Locomotive Engineers were required to pilot a CPR Slab Train from Hagersville to Nanticoke and return. The Locomotive Engineers claimed payment at the yard rate of pay. They were paid, instead, at the through freight rate of pay.

The Brotherhood contends that the grievors are entitled to payment at the yard rate of pay in accordance with Article 64.1 of Agreement 1.1 on the basis that CPR employees manning the slab train assignment are compensated at the yard rate of pay.

The Company disagrees with the Brotherhood's contention and has declined payment of the difference between the two rates of pay.

FOR THE BROTHERHOOD:

(Sgd) J. D. PICKLE
General Chairman

FOR THE COMPANY:

(Sgd) M. DELGRECO
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

A. E. Heft	- Labour Relations Officer, Montreal
J. E. Pasteris	- Labour Relations Officer, Montreal
J. B. Bart	- Manager, Labour Relations, Montreal
D. Lussier	- Co-ordinator Transportation, Montreal

And on behalf of the Brotherhood:

J. D. Pickle - General Chairman, Sarnia
G. Hamilton - Vice-General Chairman, Sarnia
G. Hall - General Chairman, Quebec

AWARD OF THE ARBITRATOR

The locomotive engineers on behalf of whom the grievance is brought serve as pilots on a CPR slab train travelling over CN track from Hagersville to Nanticoke and return. It is common ground that under the parties' Collective Agreement the service in question, if it were being performed by a CN crew, would be classified as through freight service. The Brotherhood maintains, however, that it should be classified as yard service, and payable at yard rates of pay, in accordance with Article 64.1 of the Collective Agreement. That article provides as follows:

> 64.1 Locomotive engineers acting as Pilots will be paid from the time required to report for duty until time of registering off duty on completion of trip or day's work at the rate of pay applicable to the class of power and under conditions pertaining to the class of service piloted, except that articles dealing with inspection time shall not apply.

The sole issue is whether the CPR train being piloted falls within the class of service designated as through freight service or yard service, within the meaning of Article 64.1 of the Collective Agreement. It is common ground that the CPR engineers on the train in question were paid by their employer at yard rates of pay. That is not because the work in question would generally be characterized by CP Rail as yard service. Rather, it is the result of a Memorandum of Settlement which was made following the acquisition of the territory and employees of the Toronto, Hamilton and Buffalo Railway Company, effective January 1, 1987. Pursuant to the terms of the Memorandum of Settlement, dated January 23, 1987, locomotive engineers formerly employed by the TH&B were integrated into the service of CP Rail and brought under the Collective Agreement between that Company and the Brotherhood which, along with the United Transportation Union, is a signatory to the settlement.

Paragraph 7 of the Memorandum of Settlement provides as follows:

> 7. Yard rates of pay for yard and road crews working on the TH&B territory will continue to be paid to prior rights locomotive engineers, firemen (helpers) and hostlers on yard and road assignments as identified in Appendix "A" for five years following the date of integration. Rates of pay will be those in the CP Rail/BLE Collective Agreement. Locomotive engineers, firemen (helpers) and hostlers on new yard and road services commencing subsequent to date of integration and all employees hired thereafter, including CP Rail Ontario District employees, will be paid in accordance

> with the terms and conditions of the CP Rail (Eastern Region) Collective Agreement with the Brotherhood of Locomotive Engineers.

As a result of the settlement, therefore, it was agreed that the former TH&B locomotive engineers operating over the area in question would be paid yard rates of pay for a period of five years. This "grandfather" provision does not apply to other CP Rail engineers operating over the area. The Brotherhood maintains that insofar as the grandfathered locomotive engineers are in charge of CP Rail locomotives being piloted by CN locomotive engineers, the assignment in question must be deemed yard service for the purposes of Article 64.1 of Collective Agreement 1.1, which governs the terms and conditions of employment of CN locomotive engineers on Eastern Lines.

The Arbitrator has substantial difficulty with the interpretation advanced by the Brotherhood. By its own terms, paragraph 7 of the Memorandum of Settlement refers expressly to "yard and road crews working on the TH&B territory ..." and further makes reference to "locomotive engineers ... on yard and road assignments ...". So construed the document plainly makes a distinction between the special rates of pay which have been agreed to for the grandfathered engineers and the class of assignment or service in which they are engaged. In other words the paragraph, by its own terms, acknowledges that the crews, including engineers, who receive yard rates of pay may do so even though they are on road assignments or in road service. In the Arbitrator's view the preservation of the terms "road assignments", "road crews" and "road services" within the language of paragraph 7 of the Memorandum reflects an express intention on the part of the parties to that agreement to make a special provision for the pay of the engineers in question without altering the class of service under which they are to be categorized. While argument was not addressed to this point, it may well be that other rights and obligations may attach in respect of the class of service which governs the employees in question. Whatever the merits of that issue, I am satisfied, having regard to the wording of paragraph 7 of the Memorandum of Settlement upon which the Brotherhood relies, that the CP Rail engineers whose locomotives are piloted by the members of the Brotherhood on whose behalf this grievance is taken are not reclassified into yard service by the operation of paragraph 7. Since that document recognizes that the CP Rail engineers are in road service, the Arbitrator is compelled to conclude that road service is the "class of service piloted" within the meaning of Article 64.1 of Collective Agreement 1.1 and, on that basis, through freight rates would be applicable for piloting.

It appears that for several months the Company did pay the locomotive engineers at yard rates of service for piloting over the area in question. This was corrected, as a result of which the instant grievance was pursued to arbitration. In the Arbitrator's view this is not a case where the Brotherhood can assert an extended past practice that would evidence a mutual intention with respect to the interpretation of Article 64.1 consistent with its own view, or raise an issue of estoppel. (See C.R.O.A. 1771.) In the circumstance the Company was entitled to take the corrective action necessary by

reverting to the payment of through freight rates.

For the foregoing reasons the grievance must be dismissed.

July 15, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR