

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1946

Heard at Montreal, Thursday, 14 September 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Time claims of various Windsor-based Trainmen for yard rates of pay on Train 570.

JOINT STATEMENT OF ISSUE:

Train No. 570 was established as an assignment to perform work between Van deWater Yard (Windsor) and Rouge Yard (Detroit) on or about 30 January 1987. Train No. 570 was advertised as a Road Switcher assignment.

Various Windsor-based Trainmen have submitted claims for yard rates of payment under the provisions of Articles 2.8 and 41 of Agreement 4.16.

The territory over which this assignment operates is on the former Canada Southern Railway.

The Union contends that the crews performing work on this territory have historically been compensated at yard rate of pay.

The Union contends that there is an historical recognition of switching limits on the territory where Train No. 570 operates. The Union also contends that there is nothing in the Canada Southern Agreement that discontinues the above-mentioned switching limits.

The Company contends that any agreement in effect, involving another railway on this territory, has no effect on CN employees working under Agreement 4.16. The Company had denied the claims.

FOR THE UNION:

(SGD) T. G. HODGES
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) M. DELGRECO
for: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

P. D. Morrissey - Manager, Labour Relations, Montreal
S. F. McConville - System Labour Relations Officer, Montreal

M. Hughes	- System Labour Relations Officer, Montreal
M. Fisher	- Co-Ordinator, Special Projects, Montreal
T. J. Thompson	- Terminal Superintendent, Windsor

And on behalf of the Union:

T. G. Hodges	- General Chairman, St. Catharines
G. J. Binsfeld	- General Secretary, GCA, St. Catharines

AWARD OF THE ARBITRATOR

The first issue to be resolved is whether the Company was entitled to designate the switching limits upon the purchase of the territory formerly operated by the Canada Southern Railway. Article 57.1 of the Collective Agreement provides as follows:

57.1 Switching Limits will be designated by general notice at all points where yard engines are assigned and will only be changed by negotiations between the proper officer of the Company and the General Chairman. The concurrence of the General Chairman will not be withheld when it can be shown that changes are necessitated either by:

(a) extension of industrial activities; or

(b) territorial extension of facilities;

It would appear to the Arbitrator that it would be difficult to dispute that the Company is entitled to establish switching limits under the foregoing provision whenever it builds new lines or switching yards. It is difficult to see how the employer's right is different in respect of road which is newly acquired by purchase from another railway company. In the instant case following the purchase of the new territory from the Canada Southern Railway the Company established the eastern extremity of the Detroit-Windsor Tunnel as switching limits. Consequently the movement of Train No. 570 beyond that point and into Michigan would take it outside yard switching limits.

It was, of course, open to the Union and the Company to limit the employer's right in that regard, and to make an agreement enforceable through the Collective Agreement to the effect that the switching limits established by the predecessor railway would remain in force. In fact a Special Agreement was concluded on August 15, 1985 involving CN, CP and several unions, including the instant Union. That agreement provided for certain terms, conditions and benefits of employees adversely affected and governed the integration of former Canada Southern Railway employees into the service of the Company. In the instant case, however, the Union is unable to point to any provision of that agreement, or any part of the Collective Agreement, constraining the right of the Company to establish switching limits in conformity with Article 57.1 of the Collective Agreement. Putting

it differently, even accepting that historically the predecessor railway, as well as a number of other railways, treated the movement of freight between Windsor and Detroit for transfer purposes as yard switching, the Arbitrator can find no contractual undertaking between the Company and the Union to the effect that that history would be perpetuated for the purposes of their Collective Agreement.

The material before the Arbitrator confirms that Train No. 570 regularly travels beyond yard switching limits, both easterly and westerly. There is no basis upon which the Arbitrator can find that those limits were established in violation of the Collective Agreement. In considering the effect of Article 57.1 it would appear that the Company acted within its prerogatives in establishing the switching limits as it did. Even if the acquisition of the new trackage is characterized as the territorial extension of facilities, within the meaning of sub-paragraph (b) of that article, so that it is qualified as a change in switching limits, such a designation could not be declined by the General Chairman of the Union.

For the foregoing reasons the grievance must be dismissed.

September 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR