CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1952

Heard at Montreal, Tuesday, 10 October 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim for one hundred (100) miles at yard rates dated June 8, 1988 by Locomotive Engineer C. Leddy for work performed on arrival at Toronto Yard under Article 3(d)(1), Paragraph 4 of the BLE Collective Agreement.

JOINT STATEMENT OF ISSUE:

On arrival at Toronto Yard on Train No. 507, on June 8, 1988, Locomotive Engineer C. Leddy was instructed to yard his train into G-2 and double the head end 36 cars over into F-10 to permit the handling of the tail end traffic in an expeditious manner.

The Union contends that for yarding his train Engineer Leddy is entitled to a claim of one hundred (100) miles in addition to his earnings under the provisions of the Collective Agreement.

The Company has declined payment on the basis that the 36 car double was made to ensure the expeditious movement of Train 507 through Toronto.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) G. N. WYNNE	(SGD) E. S. CAVANAUGH
GENERAL CHAIRMAN	GENERAL MANAGER, IFS

There appeared on behalf of the Company:

H. B. Butterworth	- Assistant Supervisor, Labour Relations, Toronto
F. O. Peters	- Labour Relations Officer, Montreal
G. McBurney	- Supervisor, Labour Relations, Toronto

And on behalf of the Brotherhood:

G. N. Wynne	- General Chairman, Smiths Falls
B. Suffel	- Local Chairman, Smiths Falls
B. Marcolini	- Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

The instant grievance turns on whether the cars set off from Train No. 507, destined for Detroit, Michigan, were "rush order cars" within the meaning of Paragraph 4 of Article 3, Clause (d), Subclause (1) which provides as follows:

> 3(d)(1) FINAL TERMINAL TIME
>
> Where yard engines are on duty, Engineers, after arrival at final terminal, may be required to set cars off their train at one yard location within the terminal en route to the destination yard and will yard their train in the designated track in that yard. In the event a double is required to yard the train, the appropriate cut of cars, not just the overflow, will be doubled over provided this will not increase the number of moves necessary to make the double. When a train is yarded on mainline tracks and is clear at headend and tailend in order to allow access and switching requirements it will be considered yarded. Such Engineers will be considered released from duty in accordance with applicable rules after yarding their train except that they may be required to perform switching in connection with their own train to place cars containing perishables or stock for servicing or unloading or to set off rush or bad order cars as directed for future movement. Should they be required to perform other work when yard engines are on duty they will be paid a minimum of 100 miles at yard rates for such service.

In the instant case Locomotive Engineer Leddy, as instructed by the Yardmaster at Toronto, separated his train into two sections. The headend section, which had been destined for Toronto, was doubled over into Track F-10 while the tailend segment, consisting of cars carrying a shipment of newsprint bound for Detroit remained on Track G-2 until they departed Toronto for their final destination, some two hours later.

The Brotherhood does not dispute that in the normal course Train 507, carrying newsprint from Montreal to Detroit, must operate in keeping with an expeditious time schedule, and also in keeping with a high degree of care in handling, given the sensitive nature of the cargo. The Brotherhood questions, however, given the two hour delay on the day in question, how the movement can be said to fall within the exception established under Article 3(d)(1) Paragraph 4.

A similar question arose for consideration under CROA 1272. In that case, where intermodal freight transfer was delayed some three hours, a claim was made for a similar penalty time payment. In dismissing that grievance the Arbitrator noted that as a general matter it was not disputed that the intermodal transfer was viewed as "time-sensitive", noting that it is the service to the customer which must be looked to to determine whether a given movement qualifies as a rush order. In that case, given a fair explanation by the Company for the unusual delay it was found that the shipment in question remained a rush order for the purposes of the Collective Agreement.

The record in the instant case discloses a very similar set of facts. The record of running times for Train 507 for a fifteen-day period in June of 1988 discloses that, almost without exception, the order time for the crews running from Toronto to Detroit was at or before the arrival time of Train 507. Exceptionally, on June 8 there was a two-hour delay in the order time period. This circumstance is explained by the Company, without substantial challenge by the Brotherhood, as having been caused by the unavailability of crew members to handle the train prior to that order time. As the evidence before the Arbitrator reflects, this was an unusual situation, out of keeping with the normal handling of the Detroit bound newsprint cars.

In my view it is the normal treatment of the movement which must be looked to to determine whether it falls within the exception for rush orders found within Article 3 of the Collective Agreement. I am not prepared, moreover, to conclude that the claim should turn on whether, as the Brotherhood suggests, the Detroit bound cars were located at the headend, rather than the tailend of Train 507. I am satisfied, having regard to all of the material before me, that the movement constituted a rush order which, for exceptional reasons apparently beyond the control of the Company, was delayed for a period of two hours on the day in question. No violation of the Collective Agreement is therefore established.

For the foregoing reasons the grievance must be dismissed.

October 12, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR