CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2140

Heard at Montreal, Thursday, 11 April 1991

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

The transfer of cars between Toronto Yard and the west end of Toronto by roadswitcher assignments.

JOINT STATEMENT OF ISSUE:

Roadswitcher assignments are being utilized to transfer cars between Toronto Yard and the west end of Toronto.

The Union's position is that the provisions of the Collective Agreement Article 18 are not for the purpose of replacing yard crews with road crews.

The Union has requested that the Company call yard crews, and discontinue the practice of using road crews to transfer cars within Toronto Terminal.

The Company contends that the provisions of Article 18 of the Collective Agreement allow the use of roadswitchers to perform all service within terminals, and has therefore declined the Union's request.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. R. AUSTIN	(SGD.) E. S. CAVANAUGH
GENERAL CHAIRPERSON	GENERAL MANAGER OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

G. McBurney	Supervisor, Labour Relations, Toronto
R. A. Colquhoun	Manager, Labour Relations, Montreal
B. Scott	Labour Relations Officer, Montreal
G. Chehowy	Labour Relations Officer, Montreal
H. B. Butterworth	Assistant Supervisor, Labour Relations, Toronto

And on behalf of the Union:

D. Warren	Vice-General Chairperson, Toronto
J. R. Austin	General Chairperson, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Oakville Roadswitcher was established primarily to move cars between the Ford Plant at Oakville and the Company's Agincourt Yard. This grievance arises because in the latter months of 1989 the Oakville Roadswitcher was utilized to perform certain incidental transfer work enroute. Specifically, three times a week it was required to make a set-off at Lambton on its westward trip from Agincourt to Oakville. The Union submits that the transfer work in question should be performed by yard crews. The Company submits that there is nothing in the Collective Agreement preventing the performance of the transfer work by the crew of the roadswitcher, and in that regard it relies specifically on the language of Article 18 of the Collective Agreement which provides, in part, as follows:

18(c) Trainmen assigned to Road Switcher Service will perform all service required and may be run in and out and through their assigned home terminal or any other terminal without regard for rules defining completion of trips but will not run off their promotion territories, ...

The Union relies on a number of factors, including the past practice whereby it submits transfer work has generally been assigned to yard crews in terminals where yard crews are employed, as well as on the provisions of Article 42 which govern the terms and conditions of employment of persons in yard service. In particular, it points to Rule 6(h) under Article 42 which provides as follows:

6(h) All assignments in yard and transfer service will be advertised for 7 days twice each year at the general advertisement of assignments at the general change of time, Spring and Fall. At the general advertisement of assignments, all assignments shall be considered permanent vacancies.

The Arbitrator has some difficulty with the position advanced by the Union. It seeks, in effect, to establish a degree of exclusive work jurisdiction over the transfer service for trainmen in yard service. In the Arbitrator's view that is not established on the face of Rule 6(h) of Article 42 of the Collective Agreement. That provision contemplates that the Company may, if it chooses, bulletin assignments in yard and transfer service and establishes certain times and conditions under which that is to be done. Such a provision is plainly to be distinguished from a jurisdictional scope clause of the type considered by this Office in CROA 1590, a case pleaded in reliance by the Union. In that case, which involved the Canadian National Railway Company and the Union, yardmen's work was defined in the following terms:

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 caboose) on a minimum number of tracks.

On the basis of the above provision the Arbitrator in CROA 1590 found that roadswitcher assignments home terminalled at Capreol performing switching in the Company's yard at Sudbury were entitled to yard service rates of pay.

Significantly, there is nothing in the instant Collective Agreement equivalent to the scope provision considered by the arbitrator in CROA 1590. On the contrary, the record discloses that over a number of years the Union has been repeatedly unsuccessful in its attempt to negotiate such a provision into the language of the instant Collective Agreement. There is, moreover, evidence that the Company has, in practice, utilized roadswitcher crews to perform transfer switching on an occasional basis in the past. In addition, the use of roadswitcher crews to work exclusively within yard limits has been acknowledged elsewhere. A Letter of Understanding dated April 19, 1971, between the Company and the Brotherhood of Locomotive Engineers reflects an agreement that engineers regularly assigned in roadswitcher service who perform complete tours of duty exclusively within yard or switching limits are to be paid yard rates of pay. This substantially supports the Company's view of the trend of past practice.

In light of the totality of the evidence before me, I am compelled to conclude that the Collective Agreement contains no prohibition against the occasional assignment of transfer switching to roadswitcher crews, and on balance I must prefer the interpretation of Article 18(c) advanced by the Company to the effect that such work falls within the contemplation of the phrase "ll service required" which appears in that article. For the foregoing reasons the grievance must be dismissed.

April 12, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR