CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2252
Heard at Montreal, Tuesday, 12 May 1992
concerning
CANADIAN PACIFIC LIMITED
and
UNITED TRANSPORTATION UNION
DISPUTE:
The Company dispatched a Thunder Bay yard crew to mileage 124.1 Nipigon Subdivision to reload a customer's lading. The Company subsequently declined a wage claim submitted by a Nipigon Subdivision train crew claiming entitlement to this work.
JOINT STATEMENT OF ISSUE:
On December 13, 1990, a customer's lading fell off a railcar at mileage 124.1 Nipigon Subdivision. That same day a regular Thunder Bay Yard assignment was dispatched to that location to assist in reloading the lading and then transported it back to Thunder Bay for furtherance.
A Nipigon Subdivision Conductor, who was available at Thunder Bay submitted a wage claim of one hundred miles on behalf of himself and his trainman for not being called for this work.
The Company declined payment of this wage claim.
The Union does not agree and requested that the submitted wage claim be paid.
The Company denied the Union's request. The Company further submits that the provisions of the Yard Rules Article 8 in the West and Article 7 in the East permit the action taken by the Company.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) J. R. AUSTIN
(SGD.) D. B. CAMPBELL
GENERAL CHAIRPERSON
GENERAL MANAGER, IFS
There appeared on behalf of the Company:
J. S. McLean
Manager, Labour Relations, IFS, Toronto
H. B. Butterworth
System Manager, Labour Relations, IFS, Toronto
R. A. Colquhoun
Manager, Labour Relations, Montreal
B. P. Scott
Labour Relations Officer, Montreal
G. Chehowy
Labour Relations Officer, Montreal
And on behalf of the Union:
J. R. Austin
General Chairman, Toronto
D. Warren
Vice-General Chairman, Chapleau

AWARD OF THE ARBITRATOR

The facts disclose that the freight which fell off a gondola car consisted of a cement mixer which was located at Mileage 124.1 of the Nipigon Subdivision, some 2-1/2 miles east of the limits of the East Thunder Bay Yard. It is common ground that the Thunder Bay yard crews are governed by the provisions of the UTU West (HHS, Thunder Bay and West) collective agreement. The Company maintains that it was entitled to dispatch a Thunder Bay yard assignment to load the cement mixer on a gondola car and return it to Thunder Bay by virtue of article 8(c) of the HHS collective agreement which is as follows:

8 (c)

In order to provide timely transportation service, yard crews may be used within a distance of 15 miles outside the established switching limits, to a maximum of 20 miles where the first siding extends to within 20 miles.

It is common ground that the foregoing provision was newly added to the collective agreement by Arbitrator Dalton Larson in his award of February 3, 1988. The same provision was added to the collective agreement governing operations east of Thunder Bay in the form of article 42, yard rule 7(d) of the Intermodal Freight Systems (IFS) collective agreement.

The position of the Union is that the Company is nevertheless without authority to assign a yard crew from Thunder Bay because they are governed by the western (HHS) agreement, and are not entitled to be assigned work over territory governed by the eastern (IFS) agreement. In the Arbitrator's view that position is overly technical, and clearly contrary to the intention of Arbitrator Larson.

Arbitrator Larson's award must be read as a rational whole. Absent clear and unequivocal language, the eastern and western collective agreements should not be construed in such a way as to produce inconsistent or absurd results. Standing alone article 8(c) of the western (HHS) agreement would give to the Thunder Bay yard crews the right to work within a distance of 15 miles outside the established switching limits of Thunder Bay. The provision makes no distinction as whether the limits are easterly or westerly and there is nothing in the context of the article to suggest any such limitation. If the Union's position should prevail, the Company would find itself in an anomalous position with respect to the application of article 8(c) of the western agreement only at Thunder Bay, by virtue of its peculiar location on the dividing line between the two bargaining units.

In the Arbitrator's view, these two agreements, negotiated and arbitrated together, should also be construed together in a rational and consistent fashion. I am satisfied that it was not the intention of Arbitrator Larson, nor is it the intention of the two collective agreements, that the territory fifteen miles east of the easterly limits of the East Thunder Bay Yard has somehow fallen outside the purview of both collective agreements so that no yard crew may be assigned over it. No such intention is to be drawn from the text of the agreements, and a contrary intention is to be derived from the purpose of article 8 (c) as expressed by Arbitrator Larson.

For the foregoing reasons the grievance must be dismissed.
May 15, 1992
(Sgd.) MICHEL G. PICHER
ARBITRATOR