CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2786

Heard in Calgary, Tuesday, 12 November 1996

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

DISPUTE:

Grievance of Conductor R.W. Hnatiuk, et al, for Conductor-Only premium payment pursuant to article 9A, 2(d)(ii) and 11(i) of the collective agreement.

JOINT STATEMENT OF ISSUE:

Article 9A, 2(d)(ii) states that crews operated Conductor-Only may be required to set-off a car or block of cars at the destination yard at the final terminal or at another yard within the final terminal enroute to the destination yard and as such will not be considered as a stop enroute.

Article 11(i) states that when a Conductor-Only crew is required to perform work at the final terminal defined in article 9A, 2(d)(ii) the conductor will be paid on the minute basis at pro rata rates for all time so occupied with a minimum payment of one hour in addition to final terminal time.

The Council submits that the work performed by Conductor Hnatiuk at the times and on the dates in question falls within the scope of these two articles and, therefore, payment as provided for in article 11(i) is justified.

The Company has declined the Council's grievance.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) L. O. SCHILLACI	(SGD.) S. SEENEY
GENERAL CHAIRMAN	FOR: DISTRICT GENERAL MANAGER, B.C. DISTRICT

There appeared on behalf of the Company:

M. E. Keiran	– Manager, Labour Relations, Calgary
R. E. Wilson	– Director, Labour Relations, Calgary
S. Seeney	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
R. M. Smith	– Labour Relations Officer, Calgary
J. C. Copping	– Labour Relations Officer, Calgary

And on behalf of the Council:

L. O. Schillaci	– General Chairman, Calgary
J. K. Jeffries	– Vice-General Chairman, Cranbrook
B. McLafferty	– Vice-General Chairman, Moose Jaw
D. H. Finnson	– Secretary, Saskatoon
R. W. Hnatiuk	– Grievor

AWARD OF THE ARBITRATOR

This dispute concerns the application of article 9A, 2(d)(ii) and article 11(i) of the collective agreement in relation to the claim of Conductor Hnatiuk for conductor-only premiums for work performed at the destination yard. The articles in question read, in part, as follows:

> **9A 2(d)** **FINAL TERMINAL:**
>
> ...
>
> **(ii)** A conductor-only crew may be required to set-off a car or block of cars at the destination yard, at the final terminal or an another yard within the final terminal enroute to the destination yard. This will not be considered as a stop enroute.
>
> **11 (i)** **FINAL TERMINAL TIME**
>
> ...
>
> When a conductor-only crew is required to perform work at the final terminal defined in article 9A, 2(d)(ii) and 9A, 2(e), the conductor will be paid on the minute basis at pro rata rates for all time so occupied with a minimum payment of one hour in addition to final terminal time. This time will not be used to make up a minimum day.

It does not appear disputed that on July 7, 1994 Conductor Hnatiuk operated conductor-only over the Cascade subdivision from North Bend to Port Moody, where he yarded his train before returning the locomotive power to the shop track in the Coquitlam yard. On July 13, 1994 he delivered a train to Vancouver yard, where he yarded the cars of his train, before returning the locomotive power to the shops at the Coquitlam Yard. On July 17th he delivered a train to the intermodal yard at Mayfair, and again returned the power to the Coquitlam shops. For the purposes of this grievance, although it has not been placed before the Arbitrator for ultimate determination, it can be assumed that all of the yards described in the three incidents above form part of the Greater Vancouver Terminal. It is not disputed that the Coquitlam shops are the only mechanical facility within the terminal, and that in normal circumstances locomotive consists must be returned to that location once trains have been yarded at any of the yards within the terminal. It does not appear disputed that the grievor was entitled to final terminal time under the terms of article 11 of the collective agreement from the arrival of the grievor's locomotive at mile 108, the outer point of the terminal of Vancouver.

The parties are agreed that the issue in the instant grievance is the determination of the destination yard. The Council submits that the destination yard is the location where the train's crew ultimately goes off duty. On that basis, it argues that in each of the three circumstances described above Conductor Hnatiuk's destination yard was Coquitlam, and that he is therefore entitled to the payments contemplated under article 11(i), on the minute basis at pro rata rates for the time occupied in setting off cars at what it maintains is "another yard within the final terminal enroute to the destination yard" within the meaning of article 9A, 2(d)(ii).

The Company submits that that is an incorrect interpretation of those provisions. It argues that the destination yard, for the purposes of the relevant articles, is the yard of destination for the train. It maintains that in the three instances considered the destination yards for the purposes of payment to Conductor Hnatiuk were Port Moody, Vancouver and Mayfair. In each case he was thereafter incidentally required to return his locomotive power to the shops at the Coquitlam yard. That, the Company submits, does not make Coquitlam his destination yard for the purposes of the relevant provisions of articles 9A and 11 of the collective agreement. The Employer concedes that the grievor would be entitled to payment under those provisions if, for example, he had been required to set off cars at Coquitlam yard enroute to his ultimate destination yard of either Port Moody, Vancouver or Mayfair. Alternatively, had he been required to travel to the destination yard of Port Moody, Vancouver or Mayfair to yard a portion of his cars, and then proceed with other cars to a more distant yard within the terminal, or return with the balance of his cars to the Coquitlam yard, he would also be entitled to the payment contemplated.

In the Arbitrator's view the position argued by the Company is more consistent with the language of the provisions in dispute, and with the underlying purpose for which they appear to have been fashioned. Some insight into the meaning of a destination yard can be gleaned from paragraph d(ii) of Clause 2 of article 9A. That provision speaks, in part, to the yarding of cars "at the destination yard at the final terminal". Similarly, paragraph (i) of the same provision speaks to a conductor-only crew being "... limited to doubling their train at the destination yard to the

extent necessary to yard the train upon arrival". The foregoing language appears, in the Arbitrator's view, to be more consistent with the concept of the destination yard being that location to which the cars which comprise a train are destined. It would appear not to be tied, as the Council would have it, to the location where locomotive power is to be put away, or that part of a terminal where a crew may in fact go off duty.

Additionally, it must be appreciated that the terms of the conductor-only agreement were negotiated within the context of collective agreements in the railway industry which, for many years, have provided for final terminal time to be payable to running trades crews, including time taken for the purposes of putting away locomotive power on an appropriate shop track. It would appear to the Arbitrator that if, with the advent of the conductor-only provisions, the parties had intended some radical change in the manner in which those provisions would operate, they would have so provided in express terms. There is, very simply, little that is unusual or burdensome in a conductor-only crew being involved in returning locomotive power to the appropriate shop track, perhaps in another yard, once the cars which comprise its train have been delivered to their destination yard. Different considerations, however, would reasonably apply where a conductor-only crew is compelled to fulfill the more burdensome task of setting off a car, or blocks of cars, in a yard or several yards within a terminal before ultimately reaching the final destination yard for the balance of the cars on a train. Such operations plainly involve more extensive work, and would understandably merit the conductor-only premium pay contemplated under article 11(i) of the collective agreement.

For the foregoing reasons the Arbitrator is satisfied that the interpretation advanced by the Company is more consistent with the language and purpose of articles 9A, 2(d)(ii) and 11(i) of the collective agreement than is the interpretation argued by the Council. For these reasons the claims of Conductor Hnatiuk must be rejected, and the grievance is dismissed.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR