CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3285

Heard in Montreal, Thursday, 12 September 2002

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

The issue in dispute involves the interpretation and application of article 11, clause (l) as it relates to payment of Conductor-only premiums at International Nickel Corporation Ontario's (INCO) Crean Hill and Creighton Mines.

JOINT STATEMENT OF ISSUE:

Sudbury based train crews working the Creighton roadswitcher assignments perform switching at Inco's Crean Hill and Creighton mines. Crean Hill and Creighton mines are enroute locations for the roadswitcher assignment.

Train crews working at these locations are required to handle empties and loads. The crew is required to make a number of moves on their train consist involving but not limited to spotting empties, loading cars, running around their train, as well as pulling spotted loaded cars.

The Union asserts that crews working at these locations are entitled to payment from the time they commence setting off their empties up to the time all duties inherent to switching have ceased and the conductor is located back in the engine.

> **9A (l)** Except in roadrailer service, when a conductor-only crew is required to perform work enroute defined in article 9A, 2(c), the conductor will be paid on the minute basis as pro rata rates for all time so occupied, with a minimum payment of one hour at each of the first three stops made in accordance with article 9A (2)(c) during a tour of duty. All time paid for under this clause will be paid in addition to pay for the trip but time actually

worked will be deducted in computing overtime. Work performed pursuant to article 9A (2)(c) at a fourth (4) and fifth (5) stop enroute shall not be paid pursuant to this rule.

Crews have submitted wage claims pursuant to Article 9A, clause (l) for all time occupied switching.

The Company has reduced tickets wherein time in excess of 1 hour was claimed for switching. The Company reduced the claim to reflect the minimum payment of one hour.

The Union requested on behalf of the affected employees full monetary restitution or reimbursement of all loss of earnings suffered as a result of the Company's adjustment of claims submitted.

The Company has declined the Union's request.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) D. A. WARREN	**(SGD.) R. E. WILSON**
GENERAL CHAIRPERSON	**GENERAL MANAGER**

There appeared on behalf of the Company:

D. Freeborn	– Labour Relations Officer, Calgary
D. Guérin	– Labour Relations Officer, Calgary
P. Couture	– Manager, Transportation, Montreal

And on behalf of the Union:

D. A. Warren	– General Chairperson, Toronto
D. Colosimone	– Vice-General Chairperson, Sudbury
D. Généreux	– Vice-General Chairperson, Montreal
T. Houle	– Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator confirms that conductor-only crews assigned to the switching out of ore cars at the Crean Hill and Creighton mines operations of INCO are also required to load empty cars using the customer's loading facility. The function of loading has been assigned to conductors who are responsible for directing the movement and spotting the cars beneath the loader as well as operating the mechanism which controls the process by which the ore is loaded into the cars. The assignment also involves more traditional switching duties, in relation to which, it is not disputed,

conductor-only payments are made pursuant to article 9A, clause (l) of the collective agreement.

At issue is the time expended by the conductor in the actual filling of the empty ore cars. The Union maintains that that time should also be compensated at the rate of the conductor-only premium as being included within the phrase "all time so occupied" in relation to the switching assignment at the mine locations.

The instant grievance turns on the application of articles 9A(l) and 9A(2c) of the collective agreement. They provide, in part, as follows:

> **9A (l)** Except in roadrailer service, when a conductor-only crew is required to perform work enroute defined in article 9A(2c), 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 at each of the first three stops made in accordance with Article 9A(2c) during a tour of duty.
>
> **9A (2c) (i)** A conductor-only crew will not be required to make more that five stops enroute, between the initial and final terminal to perform work enroute. There is no prohibition on switching at these locations except at enroute locations where yard crews are employed.

Prior decisions of this Office have confirmed that it is within the prerogatives of the Company to assign the kind of work being performed at the INCO mine sites to running trades employees, even though it may not involve switching or the normal operation of a train. That is clearly reflected in the decision of this Office in **CROA 2696**, a decision concerning an assignment given to conductors in the loading of cars at the Brunswick Mining and Smelting Company in Atlantic Canada. In that case, which involved the Canadian National Railway Company and the United Transportation Union, although conductors were not involved in filling ore cars, they were given the assignment of operating a mechanical overhead crane to place a lid on each car once it was loaded. In dismissing the union's grievance with respect to a claim of material change the arbitrator commented, in part, as follows:

> The Arbitrator cannot accept the first submission of the Union. As long as railways have been in operation it has been part of their legitimate business concern to provide the fullest possible service to their customers. Not infrequently such service will involve the performance of work not normally associated with the regular operation of a train. One of the oldest examples, dating perhaps from the nineteenth century, is the unloading, feeding and watering of livestock being carried on the Company's trains, a task traditionally performed by running trades employees. The Arbitrator can find nothing within the terms of the collective agreement which would, either expressly or impliedly, limit the right of the Company to assign to conductors duties which are clearly in relation to the loading of their train, and in particular the placing and displacing of covers on hopper cars which, it is agreed, are leased by the railway for its exclusive use. In the result, on the particular facts of this case, the Arbitrator is satisfied that the collective agreement would not prevent the Company from assigning the work in question to the Union's members.

The more narrow issue in the case at hand is whether the work performed for INCO, involving the loading of ore into empty cars, as well as the process of spotting the cars for that purpose, can properly be said to attract the higher payment of the conductor-only allowance for the time so expended. Upon a review of the collective agreement documents filed, as well as the history and purpose of the conductor-only agreement itself, the Arbitrator cannot sustain the Union's claim.

It is common ground that conductor-only rates are not payable for the time expended in normal travel by a road switcher. What the collective agreement provisions in respect conductor-only operations are intended to address is the additional burden, given the absence of a brakeperson, placed upon a conductor in conductor-only service in relation to the switching of cars, including switching cars enroute. That switching is the primary emphasis of conductor-only protection is, in the Arbitrator's view, clearly reflected by the language of the collective agreement provisions reproduced above. Given the language of these provisions, as well as the history and intent of the conductor-only provisions of the collective agreement as a whole, there is no compelling support in the

collective agreement for the submission of the Union that the extraordinary payments for conductor-only operations are payable for non-switching work, including the spotting and loading of ore cars, as occurs at the Crean Hill and Creighton mine sites which are the subject of this grievance. Further, as noted by the Company, it appears that where running trades employees have been involved in loading operations special related payments have been separately negotiated. An example of such an arrangement is in place for the loading of trains by conductors pursuant to the Sparwood Agreement, dated November 29, 1993, governing employees home terminalled at Cranbrook, BC.

For all of the foregoing reasons the grievance must be dismissed.

September 13, 2002 **(original signed by) MICHEL G. PICHER**
ARBITRATOR