CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 71

Heard at Montreal, Monday, July 17th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Unassigned Yardmaster W. Zuhajewicz, Toronto, for time and one-half rate of pay April 19, May 1, 9, 23 and 29, 1966.

JOINT STATEMENT OF ISSUE:

On April 19, 1966, Unassigned Yardmaster W. Zuhajewicz was called and used to fill a position of yardmaster in accordance with the provisions of the yardmasters' collective agreement.

The employee submitted a time return claiming eight hours at one and one-half times the straight time rate of pay for the service performed. The Company allowed payment at the straight time rate of pay.

The employee subsequently submitted a claim for four hours at the yardmaster's straight time rate of pay, being the difference between the amount originally claimed and the pay allowed.

Payment of this claim was declined by the Company and the Brotherhood alleges that in refusing payment, the Company violated the provisions of article 6(B), rule (c), of the yardmasters' agreement.

Like claims were submitted by Unassigned Yardmaster Zuhajewicz under similar circumstances on May 1, 9, 23 and 29, 1966.

FOR THE EMPLOYEES:

(SGD.) G. E. McLELLAN
ASSISTANT GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. E. McLellan	– Assistant General Chairman, Toronto
W. Kohot	– Secretary, G.G.C. Yard, Toronto

AWARD OF THE ARBITRATOR

The facts established that Unassigned Yardmaster Zuhajewicz worked his fifth straight time shift as a yard foreman under the yardmen's agreement on April 18. As indicated in the Joint Statement he was called and used to fill a position of yardmaster on April 19, 1966.

It was suggested by the Company that because the claims of this employee for May 1, 9, 23 and 29, 1966, are in all pertinent respects similar to the claim of April 19, 1966, they could be considered on the basis of the April 19 claim.

The Representative for the Brotherhood stated that service under two agreements is not the issue, as this employee had completed his work week under one agreement and was on his rest days; that he was therefore not subject to duty, nor was he required to be available in any capacity until the starting time of his regular assignment on the first day of the work week, unless he made himself available under the provisions of article 93(A)(i) of the yard collective agreement, reading:

> **93 (A) (i)** Except as provided in article 139 in the event that spare board becomes exhausted, and it is necessary to call a regularly assigned yardman on one or both assigned rest days, the senior available man will be called, provided he has advised the crew clerk or his supervisor in writing on completion of his work week that he will be available for call, and that such work will not interfere with his regular assignment.

Further reference was made to article 6(B)(c) of the yardmaster's agreement, reading:

> **6 (B) (c)** Any tour of duty other than as yardmaster shall not be considered in any way in connection with the application of the five-day work week, nor shall service under two agreements be combined in any manner in the application of the five-day work week. However, service under two agreements, excluding road service, will be restricted to five days in a work week when qualified relief men who have not worked five days in the work week, are available at pro rata rates.

It was then urged for the Brotherhood that these two articles in the work agreements restricted work to five days in a work week in a combination of the two agreements, and such combination can be used to make up the weekly guarantee.

Overtime provisions in each of the two agreements were quoted. The first dealing with those in yard service, contained in article 93(A)(g), Section 1, reads, in part:

> **93 (A) (g)** Employees worked more than five straight time eight-hour shifts in yard service in a work week shall be paid one and one-half times the basic straight time rate for such excess work except …

Then follow five exceptions, none of which is applicable to this claim.

Article 6 B (a) of the yardmaster's agreement reads:

> **6 (B) (a)** A regular assigned yardmaster who is required to work on either or both of the days off of the position to which he is regularly assigned shall be paid therefor at the rate of time and one-half, and unassigned yardmasters worked as such more than five days in a work week shall be paid time and one-half the basic straight time rates for such excess work except …

Then follow two exceptions, neither of which is pertinent.

For the Company it was stressed that an unassigned yardmaster usually performs service under two separate collective agreements. When working as a yardman the agreement applicable to yardmen governs his service. When working as a yardmaster or assistant yardmaster the yardmasters' agreement governs his service.

In order for this claim to succeed, the representative for the Company submitted, service under two different collective agreements would have to be combined. It was pointed out, however, that such a combination is specifically prohibited by the very provision alleged to have been violated, namely article 6(B), rule (c) of the yardmasters' agreement, as quoted: "… nor shall service under two agreements be combined in any manner in the application of the five-day work week."

Article 6(A), rule (b), was said to define the work week for yardmasters:

> **6 (A) (b)** The term 'work week' for regularly assigned yardmasters shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned yardmasters shall mean a period of seven consecutive days starting with Monday.

Further, rule (d) of article 6 (A) specifies:

> **6 (A) (d)** Unassigned yardmasters may work any five days in a work week and their days off need not be consecutive.

From the foregoing it was reasoned that article 6(B), rule (c) makes it clear that only tours of duty as a yardmaster may be used in the application of the five-day work week. Therefore, only one day's work could be counted towards this claimant's work week as an unassigned yardmaster, starting with Monday, April 18, 1966.

It was then urged that the following portion of article 6(B)(a) had particular application:

> **6 (B) (a)** … and unassigned yardmasters worked as such more than five days in a work week shall be paid time and one-half the basic straight time rates for such work …

Unassigned Yardmaster Zuhajewicz obviously did not work "as such more than five days in a work week", having worked only one day as an unassigned yardmaster.

This reasoning was strengthened by reference to article 3, rule (a) of the yardmasters' agreement, which provides:

> **3 (a)** An unassigned yardmaster, or an individual used to fill a position covered by this Schedule, will be compensated at the rate of pay applicable to such position and in accordance with the hours of service and overtime rules contained herein.

On April 19 this claimant was bound by the provision contained in article 3, rule (a) of the yardmasters' agreement, as quoted, namely "… in accordance with the hours of service and overtime rules contained herein."

A study of the foregoing submissions convinces that this claimant was properly paid on the dates claimed, not having worked "more than five days in a work week" as an unassigned yardmaster, as required in article 6(B), rule (a).

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR