CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 185

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Yard Foreman A.B. Lemon and crew, Windsor, Ontario, April 1, 1968.

JOINT STATEMENT OF ISSUE:

On April 1, 1968, Yard Foreman A.B. Lemon and Yard Helpers Y.F. Daoust and R.E. Seguin were working the 1800–0200 hours yard assignment at Windsor, Ontario. During their tour of duty, Freight Train "BD–23" with 153 cars arrived at Windsor. This freight train was too long to be yarded in one track, and in order to avoid excessive delay to motor traffic at a main street public crossing the Company required the yard crew to assist the road crew in yarding the train. One member of the yard crew was required to lift the pin lever at a coupling approximately 50 cars from the head end of the train and then give the engineman a "proceed" signal. The road crew then moved the head end of the train and the yard crew moved the rear portion of the train into designated tracks.

In addition to the pay received for the yard shift worked that day, Yard Foreman Lemon and Yard Helpers Daoust and Seguin each submitted a claim for an extra day's pay on the grounds that the Company violated Article 140 of Agreement 4.16 when it required a member of the yard crew to lift the pin lever and give a "proceed" signal to the engineman.

The Company declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. E. McLELLAN	(SGD.) K. L. CRUMP
ASSISTANT GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
D. J. Frauts	– Superintendent, Windsor
S. Nicholson	– Assistant Superintendent, Hamilton

And on behalf of the Union:

G. E. McLellan	– Assistant General Chairman, Toronto
C. G. Reid	– Local Chairman, Hamilton
K. Hillgartner	– Local Chairman, Windsor

AWARD OF THE ARBITRATOR

Article 140 of agreement 4.16 provides, in its material part, as follows:

> **Yardmen's Work Defined**
>
> 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 trainmen from performing switching required in connection with their own train and putting their own train away (including caboose) on a minimum number of tracks.

The work in question comes within the general scope of "switching, transfer and industrial work, wholly within the recognized switching limits". This was a point at which yardmen were employed, and the work which is the subject of this grievance would therefore "be considered as service to which yardmen are entitled". That is, the work in question was, in general, in the nature of yardmen's work, and trainmen would not, as a general matter, be entitled to perform it: that is, yardmen would be entitled to claim such work as their own. This generality, however, is qualified by the proviso to article 140, which sets out certain circumstances in which trainmen may perform what would otherwise be yardmen's work. Thus it is provided that the general provision of article 140 is "not intended to prevent trainmen from performing" certain switching operations.

This proviso sets out an exception to the yardmen's otherwise exclusive right to perform such work. Article 140 provides that trainmen are not prevented from performing some such work. In the instant case, the work in question was work of the sort which trainmen are "not prevented" from performing, pursuant to the proviso to article 140: it was switching required in connection with their own train. The company was entitled to require the trainmen to perform this switching, as **Case No. 11** makes clear.

To say that trainmen are "not prevented" from performing such work is not to say, however, that the work becomes exclusive to them. The work still remains within the general class of yardmen's work, as set out in the general provision of article 140. Where yardmen perform this work, they continue to perform their own work, although this particular aspect of it happens to be work which might also (by virtue of the proviso to article 140), be performed by trainmen.

The union relied upon certain words of the arbitrator **in Case No. 11**, which dealt with the application of article 140. In particular, it relied upon his statement that "... work required by management of trainmen in connection with the train for which they are the crew must be done by them". Those words appear in the following paragraph, appearing on page 4 of the award:

> The next logical question in interpreting Article 140 is who has the right to "require" trainmen to do such work in connection with their trains. Obviously, unless the agreement curtails that right, and it does not, it would be management. Therefore, whatever switching, transferring and industrial work required by management of trainmen in connection with the train for which they are the crew must be done by them. In doing so, because of this contractual assignment, they are not infringing upon the rights of yardmen.

The issue involved in that case was the propriety of management "requiring" trainmen to perform certain work (work which, as here, comes generally within the scope of yardmen's work). In concluding that certain work "must be done by them" the arbitrator was clearly concluding that they were obliged to perform such work. He was not concluding, nor was he asked to conclude, that such work must be done by them, and by no one else. Such a conclusion is, in effect, urged by the union in this case. I can find no support in article 140 or in **Case No. 11** for such a conclusion. Indeed, as I have shown, the work which trainmen are "not prevented" from performing by virtue of the proviso to article 140 – that is, the switching required in connection with their own train – remains within the general definition of "yardmen's work" set out in the general language of article 140.

Thus, in the instant case, while the particular work in question might have been performed by the train crew, being switching required in connection with their own train, it was also work to which the yardmen were entitled, and their performance of such work did not entitle them to extra pay.

The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR