CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 372

Heard at Montreal, Tuesday, September 12, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of Conductor C.C. Norris and crew, Guelph, November 16 and 18, 1970.

JOINT STATEMENT OF ISSUE:

Conductor C.C. Norris and Brakemen W.J. Rundle and H.J. Bourret were assigned to a Road Switcher assignment which was bulletined to operate on the Fergus and Guelph Subdivisions within a 30-mile radius of Guelph. On November 16, 1970, when this crew reported for duty they were advised that the assignment would operate through to Palmerston with cars of livestock. Palmerston is 12.8 miles beyond the 30-mile radius on the Fergus Subdivision.

For this tour of duty, Conductor Norris and crew claimed and were paid on a continuous time basis from 0730 hours until 1800 hours, i.e., 8 hours at straight time and 2 hours and 30 minutes punitive overtime at the road switcher rates of pay.

In addition, Conductor Norris and crew each submitted claims for an extra day's pay of 100 miles at through freight rates of pay for operating beyond the 30-mile radius on November 16, 1970. Similar claims, each for an additional day's pay, were submitted by this crew for similar handling of cars of livestock to Palmerston on November 18, 1970.

The claims were declined by the Company and the Union contends that in refusing to make payment, the Company violated Article 8, Rule (c), an Article 9, Rule (b) of Agreement 4.16.

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

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
A. D. Andrew	– System Labour Relations Officer, Montreal
L. I. Brisbin	– Assistant Superintendent, London

And on behalf of the Union:

G. R. Ashman	– General Chairman, Toronto
J. B. Meagher	– Vice-General Chairman, Belleville

AWARD OF THE ARBITRATOR

Articles 8(c) and 9(b) of the collective agreement, relied on by the Union, are as follows:

> **8 (c)** Rates of pay and working conditions applicable to Trainmen on trains propelled by steam or other motive power in Road Switcher service operating on a turn-around basis within a radius of thirty (30) miles.
>
> **1.** Trainmen assigned to Road Switcher service operating on a turn-around basis within a radius of thirty (30) miles from the point required to report for duty will be compensated at a rate per day in excess of the basic daily wayfreight rate as follows:
>
> $3.51
>
> Trainmen may be run in and out and through their regularly assigned initial terminal without regard for rules defining completion of trips. Time to be computed continuously from the time trainmen are required to report for duty until time released at completion of day's work. Eight (8) hours or less shall constitute a day's work and time in excess of eight (8) hours will be paid for on the minute basis at a rate per hour of three-sixteenths (3/16ths) of the daily rate.

(Article 8(c) (2) and (3) is not material)

> **9 (b)** In all road service, except passenger service, one hundred (100) miles or less, eight (8) hours or less (straight-away or turn-around) shall constitute a day's work. Miles in excess of one hundred (100) will be paid for at the mileage rates provided.

The grievors' regular assignment was in Road Switcher service operating on a turn-around basis within a radius of thirty miles of Guelph. There can be no doubt, then, that in calculating their compensation, the premium provided for in Article 8(c)(1) is to be included. It appears that this premium was included in the calculation of the grievors' compensation for the day in question, and if that is so, then there was no violation of Article 8(c)(1). If the premium were not included, then the grievance would be allowed to that extent. The fact that the grievors were directed to and did perform work beyond a thirty-mile radius of Guelph does not disentitle them to the premium which goes with their assignment. Article 8(c)(1) deals only with the premium payable in respect of such an assignment, and does not have the effect of preventing the Company from directing employees to perform other work.

Article 9(b) sets out a "minimum day" provision, and it is, essentially, the Union's position that in being assigned to work beyond a thirty mile radius of Guelph the grievors were, in effect, assigned to a separate days' work. This claim is basically similar to those made in a number of earlier cases, referred to in **Case No. 197**, and subsequently followed in **Case No. 204** and **Case No. 362**. There is no "automatic end-of-trip" rule, as the parties agree, and the collective agreement expressly contemplates combination service in Article 16. While it may be that this was not strictly speaking a case of combination service, since the grievors appear to have worked in Road Switcher service throughout the day in question, there was at least a combination of such service in a radius more than – and less than – thirty miles of Guelph. Reading the provisions of the collective agreement in the manner most favourable to the grievors, then, they would be entitled to the highest applicable rate including the premium referred to in Article 8(c)(1) – in respect of the entire day. Again, this appears to have been the basis on which payment was made, but if it was not, the grievance is allowed to that extent.

In respect of the day's work, of course, the grievors would be entitled to the minimum payment referred to in Article 9(b). I am unable to see any basis in the agreement, however, for concluding that they would be entitled to two such payments in respect of the work they did on the day in question.

Accordingly, the grievances must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR