CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1323

Heard at Montreal, Wednesday, January 9, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of G.A. Carlson and crew, Revelstoke, B.C., for eight miles which had been deducted from his trip ticket of June 28, 1984.

JOINT STATEMENT OF ISSUE:

Article 11 clause (f) (1) reads as follows:

> **11 (f) (1)** When trains are turned at intermediate points, all time at turnaround point or points, including the initial terminal when turning at that point in accordance with fourth paragraph, clause (c)2, from arrival of locomotive at, until departure of locomotive from the outer main track switch or designated point, will be paid on the basis of 12? miles per hour at the rate of class of service performed.

Article 11 clause (f)(2) reads as follows:

> **11 (f) (2)** When switching is performed at designated turnaround points, the provisions of Subsection (1) of this clause will apply. Ruby Creek, Trail, Roseberry, Chase, Keith and McLean and such other points as may be established hereafter will be recognized turnaround points.

On June 28, 1984, Conductor Carlson was instructed to take the mid-train locomotive consist, robot 1019 and units 5651 and 5675, from its position in the train, move the units to the headend and leave the robot in the storage track at Chase, B.C. As forty minutes was spent at Chase, eight miles were claimed. The Company deducted the eight miles contending the robot was a unit and therefore, no payment was warranted in accordance with the provisions of the NOTE to article 11 clause (f)(2) which reads as follows:

> **NOTE** If picking up or setting out a diesel unit or units is the only service performed, this will not be regarded as switching. The term 'unit or units' means a unit or units that were operated or are to be operated by the engineer on the run on which this service is performed.

The Union contends that the first sentence of the NOTE specifically refers to picking up or setting out diesel units as the only exception to the requirement for payment. The Union also contends that the second sentence provides that only the units referred to in the first sentence which were operated or are to be operated on the run are excluded.

The Union requests payment of the eight miles deducted from Conductor Carlson's ticket.

The Company contends that the robot is a unit as contemplated in article 11(f)(2) NOTE and denies payment of the eight miles.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. H. MCLEOD	**(SGD.) L. A. HILL**
GENERAL CHAIRMAN	**GENERAL MANAGER, OPERATION AND MAINTENANCE**

There appeared on behalf of the Company:

F. R. Shreenan	– Supervisor, Labour Relations, Vancouver
B. P. Scott	– Labour Relations Officer, Montreal
D. N. McFarlane	– Assistant Supervisor, Labour Relations, Vancouver
M. G. Degirolamo	– Assistant Superintendent, Revelstoke, B.C.

And on behalf of the Union:

J. H. McLeod	– General Chairman, Calgary
P. P. Burke	– Vice-President, Calgary
I. L. Robb	– Vice-General Chairman, Thunder Bay
L. O. Schillaci	– Secretary, Vancouver

AWARD OF THE ARBITRATOR

This grievance is a claim made by G.A. Carlson and crew for eight miles pay pursuant to clauses (f)(1) and (2) of article 11 of the collective agreement.

Article 11 clause (f)(1) reads as follows:

> **11 (f) (1)** When trains are turned at intermediate points, all time at turnaround point or points, including the initial terminal when turning at that point in accordance with fourth paragraph, clause (C)2, from arrival of locomotive at, until departure of locomotive from the outer main track switch or designated point, will be paid on the basis of 12? miles per hour at the rate of class of service performed.

Article 11 clause (f)(2) reads as follows:

> **11 (f) (2)** When switching is performed at designated turnaround points, the provision of Subsection (1) of this clause will apply. Ruby Creek, Trail, Roseberry, Chase, Keith and McLean and such other points as may be established hereafter will be recognized turnaround points.

It is common ground that the grievors were instructed on June 28, 1984 to set out robot car 1019 and units 5651 and 5675 in the storage track at Chase, B.C. The forty minutes consumed in performing this task has given rise to the grievors' claim. In this regard the Company argued exemption from the claim based on the Note attached to article 11, clause (f)(2) which reads as follows:-

> **NOTE** If picking up or setting out a diesel unit or units is the only service performed, this will not be regarded as switching. The term "unit or units" means a unit or units that were operated or are to be operated by the engineer on the run on which this service is performed.

The issue, simply put, is whether the robot car housing the sophisticated technology necessary for the operation of a diesel engine (i.e. unit) is a unit that would exempt the Company from payment of the grievors' claim. There is no dispute that the said technology, in the language of Mr. Scott, the Company's representative, is a necessary part of, and integral to, the operation of a diesel engine. The difficult question I must answer is whether this ought to suffice to make the robot car housing this technology while the diesel engine is in operation "a unit" for purposes of the exemption under clauses (f)(1) and (2) of article 11.

At first impression the Company's position appears most compelling. In the one sense it appears a flimsy distinction on the Trade Union's part to separate the diesel unit from the robot car that houses the technology without which the diesel unit cannot operate. Practical sense would almost dictate that you would not set off the one without the other for the purpose of defining "a unit or units that were operated … by the engineer on the run on which this service is performed". And, indeed, to a large extent the prudence of this interpretation is confirmed as a result of the recent miniaturization of the technology enabling it to be housed in the diesel unit itself. In other words, the robot car in time will become redundant to the Company's operations.

What has given me pause for concern is the historical analysis of article 11's evolvement over the years as is described in the Union's brief. That analysis reads as follows:

> During the time when steam engines were used, it was sometimes necessary for the train consist to include one or more water cars which were marshalled next to the steam locomotive. Their placement and use were necessitated by the need of the steam engine for water. In some areas, it was necessary to have this water car placed in the train due to the lack of sufficient facilities en route for watering the engine. The water car itself did not form part of the unit consist even though it was connected to the unit by a water hose. Just the same, its role in enabling the locomotive to operate was vital.
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> If, during a trip, it was no longer necessary to use the water car, instructions would be given to set out this car. If this set out took place at a junction point or a designated turnaround point, payment for switching as contemplated by article 11(f), was made without question. The converse of this was also true, when required to pick up a water car en route.
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> The placement of the robot car in conjunction with the mid-train diesel units parallels the placement of the water car in the steam engine era. As with the need for water to operate the steam locomotive, in order for the locomotive engineer to enable to operate the mid-train locomotive units, a robot car is necessary. When it is no longer necessary for trains to be operated with mid-train power and the train is made conventional, the need for the robot car is gone.

Accordingly the Trade Union submitted that just as the water car, despite its importance, was not treated in the past as part of the steam engine, so too the robot car should not be viewed as part of a diesel unit. These cars are separate and distinct vehicles that are not part of the steam or diesel unit. Or, if they were intended to be treated the same as an engine unit for the purpose of exempting the Company from payment of the switching allowance then it was argued that the collective agreement should have expressly so provided,

And in this latter regard, the Trade Union demonstrated that the Company has expressly acknowledged this distinction under article 2, clause (v) of the BLE agreement which reads as follows:

> **2 (v)** If picking up or setting out a **diesel unit(s) or robot car** is the only service performed, this will not be regarded as switching in the application of clauses (p), (q) and (r). The terms unit(s) and robot car mean a unit(s) or robot car that were operated or are to be operated by the engineer on the run on which this service is performed. emphasis added

In having regard to each parties' submissions I have resolved that the Trade Union's position is the more convincing. Not only has it demonstrated by recourse to the historical analysis of the relevant provision the soundness of its argument, the plain truth is that the Company has recognized the weight of the Trade Union's position by taking the necessary steps to protect its interests under the analogous provision of the BLE agreement. In other words, I am satisfied that the robot car is separate and apart from the diesel unit for the purpose of the Note attached to clause (f)(2) of article 11 of the collective agreement.

This grievance succeeds. Accordingly the Company is directed to pay the claim as alleged in the grievance. I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR