CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2079

Heard at Montreal, Thursday, 15 November 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yard Foreman R. McPhee and Yard Helpers G. Witty and J. Hutt for 150 miles at Yard Rates for January 1, 1990.

JOINT STATEMENT OF ISSUE:

On January 1, 1990 Train No. 10 originating in Hawk Junction, Ontario, with a consist of 24 cars, was instructed on arrival at Steelton Home terminal, to yard his train in South ASCO #2 and place 4 cars located next to his units into the transfer. The work was completed and the road crew claimed 55 minutes pay representing final terminal time per Article 10.

The Union contends that this work belongs to Yard Crews per Article 107. Since this Yard of 0800-1600 was cancelled January 1, 1990 and were available they were entitled to the work and payment of 150 miles at Yard Rates due to Statutory Holiday in accordance with Article 89 5(2)(a).

Further the Organization contends that Road Crews in reference to Article 107, yarding trains are dictated by Letter of Understanding on Page 201 of the current Collective Agreement. Also in accordance with the Collective Agreement Road Crews and Yard Crews are completely separate in payment and work. e.g. Appendix "B" on Page 149, Question 9.

The Company contends that Article 107 has not been violated, that Train No. 10 performed work in yarding his train in keeping with the provisions of Article 10(B) and Article 107 therefore has declined payment of this claim. Further the Company contends that Appendix "B", Page 149 – Question No. 9 is not relevant to this claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD) J. H. SANDIE	(SGD) V. E. HUPKA
GENERAL CHAIRPERSON	FOR: PRESIDENT – RAIL

There appeared on behalf of the Company:

V. E. Hupka	– Manager, Industrial Relations, Sault Ste. Marie
J. N. Gardner	– Labour Relations Officer, Sault Ste. Marie
N. L. Mills	– Superintendent, Transportation, Sault Ste. Marie

And on behalf of the Union:

J. H. Sandie	– General Chairperson Sault Ste. Marie
B. Marcolini	– President, UTU–Canada, Ottawa

AWARD OF THE ARBITRATOR

Article 107 of the Collective Agreement provides, in part, as follows:

> **107** 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 foregoing provision must be read in conjunction with the Letter of Understanding between the parties date May 14, 1979 which reads as follows:

> During negotiations you asked that we provide you with a letter clarifying the intent of the words "... a minimum number of tracks" which appears in paragraph 1 of Article 107.
>
> We advised you that if a trainman is instructed to yard his train in a particular yard track and such yard track will not hold the entire train, it is the intent of the rule to provide that the surplus cars would be doubled over, if possible, to one other track. However, if due to yard congestion, there is insufficient room to double over all cars to one track, it may be necessary to double over to more than one track in order to put the train away.

The material before me establishes that Steelton Yard is comprised of three separate sub-yards. In addition to the general receiving area which comprises the main body of the yard, there is a transfer yard operated jointly by the Company and the Algoma Steel Company, as well as a further transfer yard which the Company operates in conjunction with CP Rail and one American line. In the Arbitrator's view there is nothing in the operation of Article 107 of the Collective Agreement which would prevent the Company from instructing a road crew to yard their train on a track in any of the three areas. That, in essence, is what transpired to the extent that the direction given to the crew of Train No. 10 was to yard their train in South ASCO No. 2. If the entire train had been yarded in that manner, the Union could have no basis for complaint.

The grievance arises because the road crew followed an additional directive to spot four cars in the CPR transfer yard, prior to returning their motive power to the shop track. However, the representation of the Union's representative before the Arbitrator clearly confirms that the organization has given its assent to road crews switching part of their train into the CPR transfer yard on holidays when yard crews are not at work, without violation of Article 107. That is what transpired. In the Arbitrator's view the grievance could only succeed if it could be established that the Company did not have the right to order the road crew to yard their train in the ACR/Asco joint trackage transfer area. There is nothing in the Collective Agreement to suggest that the right of the Company in respect of the switching operations which occurred is any different because the train was yarded in the ACR/Asco area, rather than the main receiving area of Steelton Yard. In light of the Union's prior agreement, it could not complain if the train had been yarded in the receiving yard, with four cars being switched out of it to the CPR transfer yard. Since the facts at hand are no different in principle, I do not see on what basis it can succeed in this grievance.

In keeping with its understanding with the Union, the Company yarded the train in its own trackage in part of Steelton Yard, and switched out four cars into the CPR transfer yard, utilizing the road crew. While the case might arguably be different if the train had been yarded in the main receiving area, with two separate switching operations thereafter being effected into both transfer yards, that is not what transpired, and no departure from the agreement of the parties is disclosed.

For the foregoing reasons the grievance must be dismissed.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR