CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2299

Heard at Montreal, Wednesday 11 November 1992

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Switching at Sept-Iles Yard.

JOINT STATEMENT OF ISSUE:

The Union claims that a crew from the Sept-Iles Yard proceeded out onto the main line, with a CL train consisting of 214 cars, in violation of articles 34.04, 36.01 and 36.03 and of preamble 8 of the collective agreement.

The Company rejected the grievance claiming that the yard crew was performing normal switching and that there was no violation of the collective agreement.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. ARSENAULT	(SGD.) A. BELLIVEAU
GENERAL CHAIRMAN	DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

R. Monette	– Counsel, Montreal
A. Belliveau	– Director, Employee Relations, Sept-Iles
R. Plourde	– Superintendant of Train Movement, Sept-Iles
C. Vaillencourt	– Controller of Locomotives, Sept-Iles

And on behalf of the Brotherhood Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairman, Sept-Iles

AWARD OF THE ARBITRATOR

The facts are not in dispute. On March 17, 1991, at about 2120 hours, two yard engines pulling 214 empty cars passed beyond the yard limits at the north end of Sept-Iles Yard. It seems that the yard engines and approximately 150 of the cars also moved onto the main line. The movement in question was made in order to facilitate the yarding of the cars in the departure yard. Although the operation was performed by I.O.C. employees who work as a yard crew within the yard, the engine was controlled from the ground and no employee actually left the yard. However, it is agreed that a Company officer, Controller of Engines, Mr. C. Vaillencourt, was present along the length of the route, outside the yard, in order to supervise the movement in question. It was Mr. Vaillencourt who was named in the orders which allowed the movement onto the main line. The Union claims that the Company violated several terms of the collective agreement, as well as article 8 of the preamble, which reads as follows:

> **8.** No supervisory officer will normally fill the job of employees covered by this collective agreement.

Counsel for the Union submits that it is the case of a train movement on the main line which constitutes the jurisdiction of exclusive work of the employees who are members of the bargaining unit.

The Union pleads as well article 34.04, which reads as follows:

> **34.04** Regular employees will be assigned to handle permanent work trains and such other regular or particular service as may be established.

Counsel for the Union submits that the movement of 150 cars and two engines, for a distance of approximately one mile on the main line, constitutes a train movement in a particular service within the meaning of article 34.04 of the collective agreement, and that the Company was, therefore, under an obligation to assign regular employees to that service.

For its part, Counsel for the Company claims that it is a matter of a switching operation effected within the yard, and that it is not a train in the sense of the Canadian Rail Operating Rules. He draws the attention of the Arbitrator to the definition found in the CROR which reads as follows:

> **Train** An engine or more than one engine coupled, with or without cars, or a track unit(s) so designated by its operating authority, displaying a marker(s).

The Arbitrator cannot accept the claim of the Company to the effect that the movement in question was not a train within the meaning of the CROR. It is a case of two engines coupled to cars, with authority to operate on the main line. Furthermore, it appears well established, in accordance with prior practice, that the bargaining unit members have the right to be assigned to the operation of all trains which operate on the main line. That appears to have been acknowledged by the Company since January 19, 1973. On that date the director of the Company replied to a similar grievance filed on August 23, 1972 in the following terms:

> Instructions have been given to dispatchers that no I.O.C. trains manned by I.O.C. yard crews are to be given permission to work north of North Sept-Iles or outside Sept-Iles yard limits.

In the instant case, even though the work in question was done to facilitate the switching which was to be done within the yard limits at Sept-Iles, it is undeniable that the manoeuvre involved the considerable movement of a train on the main line. For the reasons noted above, that constituted the movement of a train in a particular service within the meaning of article 34.04, which place an obligation on the Company to assign members of the bargaining unit to perform it. The grievance is therefore accepted. The Arbitrator orders that the crew which would have been called be compensated for the resulting loss of wages and benefits, with interest.

November 13, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR