CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3338

Heard in Montreal, Wednesday, 14 May 2003

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Interpretation and application of articles 41.3 and 41.5(e) of Agreement 1.1 as it relates to the use of Yard Crews in Rescue Service and entitlement to payment while working outside of switching limits.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company does not have the right to call a Yard Crew ahead of a Road Locomotive Engineer, to rescue a train enroute. When a Yard Crew is used, the train to be rescued, must meet the criteria for a rescue under article 41.5(e) of Agreement 1.1. The Union is also seeking that these Locomotive Engineers be made whole for any loss of earnings.

Further, the Union contends that Locomotive Engineers in Yard Service, who are used in Rescue Service, are entitled to additional payment for all time working outside of switching limits as per article 41.3 of Agreement 1.1.

The Company's position is that it has the option of using either a yard or road crew to perform Rescue Service as per article 41.5. When a Yard Crew is used, no additional payment ensues for time worked outside of switching limits, as per Article 41.3.

Further, the Company contends that the criteria for Rescue Service under Article 41.5(e) extends to include crews who are unable to make the terminal prior to the time their personal rest is due to commence.

The Company has declined the Brotherhood's grievances for these time claims.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) RICHARD DYON	(SGD.) J. KRAWEC
GENERAL CHAIRMAN	MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

J. P. Krawec	– Manager, Human Resources, Toronto
D. Laurendeau	– Manager, Human Resources, Montreal
B. Hogan	– Manager, Workforce Strategy, Toronto

And on behalf of the Brotherhood:

R. Dyon	– General Chairman, Montreal
P. Vickers	– Vice-General Chairman, Montreal
R. Leclerc	– General Chairman, Grand-Mère
G. Hallé	– Canadian Director, Ottawa

AWARD OF THE ARBITRATOR

This grievance concerns a dispute between the parties with respect to several aspects of the application of article 41 of the collective agreement. More specifically, it concerns the terms and conditions which attach to locomotive engineers who are part of yard crews working outside switching limits. In general terms, article 41 addresses several circumstances which may involve such work. These include road service in cases of emergency, road service in the furtherance of timely transportation service and rescue service. The provisions in question are as follows:

> **Working Outside Switching Limits**
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> **41.3** Locomotive engineers called to perform yard service within switching limits, shall not be used in road service when road employees are available, except in cases of emergency. Locomotive engineers use in road service under conditions just referred to, shall be paid miles or hours, whichever is the greater, with a minimum of 1 hour for the class of service performed in addition to the regular yard pay, and without any deduction therefrom for the time consumed in road service.
>
> …
>
> **41.5 (a)** In order to provide timely transportation service, yard crews may be used within a distance of 25 miles outside the established switching limits.
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> **(b)** Yard crews used outside of established switching limits in such circumstances during their tour of duty shall be compensated on a continuous time basis at yard rates and conditions.
>
> **(c)** The application of this paragraph 41.5 shall in no way have the effect of abolishing road switcher assignments.
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> **(d)** Yard crews used in excess of the miles outlined in sub-paragraph 41.5(a) will be governed by the provisions of paragraphs 41.3 and 41.4 of this article.
>
> **Rescue Service**
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> **(e)** In the application of paragraph 41.3, yard crews may be used to bring trains into the terminal within a distance of 50 miles, provided this service is solely for rescuing trains that are disabled or cannot make the terminal prior to the expiration of hours of service.

Central to the dispute between the parties is the relationship between articles 41.3 and 41.5(e) reproduced above. The Brotherhood maintains that in the application of article 41.5(e) when yard crews are utilized for rescuing trains which are mechanically disabled or, alternatively, cannot operate by reason of the expiration of hours of service, the additional payment provisions found in article 41.3 apply. The Company takes the position that they do not.

As indicated at the hearing, the Brotherhood does not dispute that the Company can utilize yard crews ahead of road crews for rescue service under article 41.5(e), or in cases of emergency under article 41.3. A subsidiary issue in dispute, however, appears to be the meaning of a train which needs rescue because it "cannot make the terminal prior to the expiration of hours of service." The Company maintains that that provision refers not only to employees who would otherwise work beyond the legal limit of permissible hours, but also to employees who are no longer under an obligation to operate their train because they have booked personal rest. It appears that the Brotherhood maintains that the voluntary booking of personal rest is not a criterion for the application of the rescue service provisions of article 41.5(e) of the collective agreement.

The Arbitrator deals firstly with the last issue raised. The Company maintains that the second condition enumerated under article 41.5(e) to justify the use of yard crews in rescue service, namely that the train in question "… cannot make the terminal prior to the expiration of hours of service." is not limited to those situations where the road crew faces the legal limit of possible running hours. The Company maintains that the language of the agreement also encompasses the circumstance of crews unable to make the destination terminal before the time that their booked personal rest is due to commence. In the Arbitrator's view the position of the Company is to be preferred to that of the Brotherhood on this aspect of the dispute. The phrase "… the expiration of hours of service" is both general and broad. Article 29.5 of the collective agreement gives to locomotive engineers who have been on duty ten hours or more the right to book rest enroute. That right is modified only for crews operating in extended run

territory between certain designated terminals, in which case eleven or twelve hours limits may apply. There is no apparent reference to the phrase "hours of service" in any particular provision of the collective agreement, although in respect of road service it would appear that article 29 does generally govern the rights and obligations of employees with respect to the minimum hours they may operate before being entitled to book rest.

Given the provisions of the collective agreement, and a purposive consideration of the language of article 41.5(e), it is difficult to understand on what basis the parties would have intended the second criterion to be restricted to train crews who meet the legal limit of their running time, and not to those who invoke their collective agreement right to book rest. In either case the Company is faced with the situation of a train which can no longer operate and is in need of rescue. Given that reality, and the breadth of the phrase "the expiration of hours of service" the Arbitrator is compelled to conclude that the interpretation of the Company is correct as regards this aspect of the dispute. The Arbitrator therefore finds and declares that in the application of article 41.5(e) the Company is entitled to dispatch yard crews into rescue service to deal with trains operated by road crews who can no longer run by reason of their having booked personal rest.

The Arbitrator has greater difficulty with the position of the Company as regards the issue of the method of payment for yard crews who are used to bring trains into the terminal within a distance of fifty miles in rescue service under article 41.5(e). The distinction between road service and yard service is long-standing in the industry, and continues to be maintained within the provisions of the instant collective agreement. Many of the awards of this Office have involved disputes between the parties concerning the conditions whereby yard crews may work beyond yard switching limits and, conversely, limits on work which may be performed by road crews inside yard limits, and the remuneration which attaches to either situation. It is not disputed that article 41.3 of the collective agreement has been in place for a good number of years. The Arbitrator is advised that the rescue service provisions found in article 41.5(e) were introduced into the collective agreement in 1995. It appears that the concept of rescue service was then introduced in relation to the extended runs which then came into being.

Central to the resolution of this dispute is the meaning of the phrase "In the application of paragraph 41.3" which appears as the introductory words of paragraph (e) of article 41.5. As a canon of construction in the interpretation of collective agreements, it is well established that all of the words which the parties utilize to express their intention are presumed to have some purpose and meaning. In the case at hand, if the interpretation of the Company is adopted, the introductory phrase to paragraph (e) would be rendered virtually meaningless, as the Company's view of this provision does not involve the application of paragraph 41.3 and therefore does not attract the premium payments provided within it. In effect, the Company would interpret the words in question as meaning "Notwithstanding the application of paragraph 41.3 …". With respect, the Arbitrator has substantial difficulty with that interpretation.

As noted above, the rescue service provision introduced into the collective agreement in 1995 is clearly an exception to the general rule whereby yard crews are not to be used in road service when road employees are available for such work. Historically, the stated exception to that rule was cases of emergency, as provided under article 41.3.

The Brotherhood's interpretation of these provisions is, in the Arbitrator's view, more consistent with the purpose and intent of the language utilized. As the Brotherhood submits, article 41.5(e) gives to the Company a number of advantages. Firstly, yard crews may be utilized in rescue service notwithstanding that road employees are available. Secondly, the distance over which they may be so utilized is established as fifty miles, twice the radius for which yard crews could be used in road service outside established switching limits for the furtherance of timely transportation service, as provided under article 41.5(a). In exchange, the article stipulates, for the protection of the Brotherhood, that such service is to be restricted "solely" for the purpose of rescuing disabled trains or trains whose crews have attained the expiration of their hours of service. As part of the bargain, the Arbitrator is satisfied that the Brotherhood gained the advantage of payment for such service under the provisions of article 41.3 of the collective agreement. I can see no other reasonable understanding of the meaning of the qualifying phrase "In the application of paragraph 4.13 …" which appears as the first condition of article 41.5(e) of the collective agreement.

There is, additionally, a logical inconsistency which would result in the interpretation of these provisions advanced by the Company. If the employer's interpretation is adopted, yard crews can be dispatched to distances of up to fifty miles in rescue service at no additional compensation, while yard crews dispatched over shorter distances in emergency service, or dispatched between twenty-five miles and forty miles outside of switching limits in timely transportation service, do have the benefits of premium payments. It is not clear to the Arbitrator that such an arguably inconsistent or anomalous result would have been intended by the parties. In any event, for the more

fundamental reasons related above, and in particular the express inclusion of the phrase "In the application of paragraph 41.3" incorporated within the language of article 41.5(e), I am satisfied that the interpretation of the Brotherhood with respect to the payment to be made to locomotive engineers in yard service who are dispatched beyond switching limits in rescue service, namely that they are to be compensated in accordance with the formula contained within article 41.3 of the collective agreement, is correct.

For the moment the Arbitrator finds as stated and makes the foregoing declarations. Under reserve of hearing any further submissions from the parties, it would appear to the Arbitrator that these determinations dispose of the issues raised in the Joint Statement of Issue and argued in the briefs submitted by the parties. Should there be need for any further determinations or clarifications, however, the Arbitrator retains jurisdiction.

With respect to the issue of remedy, there is no detailed evidence before the Arbitrator as to the loss of work opportunities to any road engineers, nor does it appear likely that such claims would be extensive, given the Brotherhood's agreement that the Company is entitled to call yard crews ahead of road crews to perform rescue service under the provisions of article 41.5(e). With respect to the issue of the proper payment of rescue service performed by locomotive engineers in yard service there is no material before the Arbitrator with respect to the specifics of such claims as may be identified for compensation. In the circumstances, therefore, I deem it appropriate to refer both of these remedial matters concerning possible compensation back to the parties for their own consideration. Should they be unable to agree, the matter may be further spoken to.

May 23, 2003

(signed) MICHEL G. PICHER
ARBITRATOR