CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 174

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim that the Company violated Articles 12.15 and 3 when it declined to pay two hours punitive overtime to the following Warehousemen Grade 3 on the following dates:

K Anderson	January 27 and February 20, 1969
E. Bennett	February 7, 1969
P. Morris	February 27, 1969

JOINT STATEMENT OF ISSUE:

On January 27, February 7, 20 and 27, 1969, shipments of Freight were checked after 6:00 p.m. by Seniority Group 3 Checkers.

The Brotherhood claims violation of Articles 12.15 and 3 and has requested that the following employees be paid two hours punitive overtime on the following dates:

K. Anderson	January 27 and February 20, 1969
E. Bennett	February 7, 1969
P. Morris	February 27, 1969

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) E E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.)K. L. CRUMP
ASSISTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	Labour Relations Assistant, C.N.R. Montreal
G. James	Asst. Labour Relations Officer, C.N.R. Moncton

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B., Nfld.
G. M. Stratton	Local Chairman, BRAC, Corner Brook, Nfld.-Sr.Vice G.C.
G. W. Parsons	Local Chairman, BRAC, Port Aux Basques, Nfld.
W.C.Y. McGregor	lnternational Vice President, BRAC, Montreal

AWARD OF THE ARBITRATOR

The grievors, Warehousemen Grade 3, are members of Seniority Group 2. They generally work in or from an area known as the "express" or "local" shed. This is a one-shift, day operation, and the warehousemen are primarily engaged in the acceptance and delivery of local traffic. They claim that they were entitled to perform certain work which was, on a number of occasions, performed by Checkers, who are members of Seniority Group 3. These employees, known as "wharf" or "stevedore" employees, generally work in the area of the "transit" shed. Theirs is a two-shift operation concerned with the handling of traffic to and from ships.

On the occasions in question, shipments of fish, under carload waybilling, were delivered to the transit shed, over a period of hours from early afternoon until about 7:30 p.m. The boxes of fish were unloaded from the shipper's truck onto the shed floor by means of a fork lift truck operated without objection, by an employee in Seniority Group 3 (a "transit" employee). No check was made until the final truckload arrived in the evening. Then a Freight Checker (a group 3, transit, employee) on his regular tour of duty in the transit shed counted the number of boxes and receipted the bill of lading.

Article 3 of the collective agreement sets out the groups of employees coming within the different seniority groups "for the purpose of promotion and seniority". This provision is not in itself helpful to the grievors, for it adds nothing to the fact that the grievors, coming within a particular classification, seek to protect work which is appropriate to that classification. There is nothing in article 3 to aid in the determination of what work is appropriate to any particular classification.

Article 12.15, relied on by the union, is as follows:

> "12.15 Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week. In all other cases by the regular employee."

This provision deals with the assignment of extra work in general, and is of no assistance in determining whether any particular classification should perform any particular work. Indeed in the instant case, the work which has been challenged seems to have been done as part of the regular assignment of the group 3, transit,

Checkers.

In order to determine whether work is appropriate to any particular Job classification, it is necessary to consider the work in question in the light of an agreed Job description, or in the light of the actual practice of the parties. In the instant case, it appears to have been the custom for the group 3, transit, employees to accept and check carload shipments of fish. It may be that work of this sort could properly come within the scope of a Warehouseman's duties. This is not to say, however, that it does so exclusively. In the instant case, to put the union's case at its highest, it might be said that this work properly came within the scope of either group. But even if the company might have assigned the work to Warehousemen, this is not to say that they were obliged to do so exclusively, at the expense of the Checkers. I am unable to see that any provision of the collective agreement has been violated in this assignment, and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR