CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO 206

Heard at Montreal, Tuesday, April 14th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim of the Brotherhood that work belonging to the Maintenance of Way Department was assigned to the "Trouble Gang" at Angus Shops on and subsequent to September 19, 1968.

EMPLOYEES STATEMENT OF ISSUE:

Beginning on September 19, 1968, the Company assigned the work of excavating, breaking concrete with power hammers as well as the work of mixing and finishing concrete to members of the "Trouble Gang" at Angus Shops. On October 8, 1968, the Brotherhood filed a claim in behalf of three furloughed B&B employees, contending that such work properly belongs to the Maintenance of Way Department, citing Sections 14 and 21 of Wage Agreement No. 14 and, therefore, that the three claimant B&B employees were each entitled to 8 hours' pay for every day expended by the "Trouble Gang" in the performance of such work.

FOR THE EMPLOYEES:

(SGD.)G. D. ROBERTSON
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. A. McGuire	Manager Labour Relations, C.P.R. Montreal
H. N. MacPherson	Works Manager, Angus Shops, C.P.R. Montreal
R. Mannion	Supervisor Labour Relations, Office of Chief of Motive Power & Rolling Stock, CPR, Montreal
A. Mosley	Supervisor Trouble Gang, Angus Shops, C.P.R. Montreal
J. E. Cameron	Labour Relations Assistant, C.P.R. Montreal

And on behalf of the Brotherhood:

G. D. Robertson	System Federation General Chairman, B.M.W.E. Ottawa
W. M. Thompson	Vice President, B.M.W.E., Ottawa
A. Passaretti	General Chairman, B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

As is stated in the employees statement of issue, the work in question was assigned to "trouble gang" employees at the material times. Employees in the trouble gang are represented by the International Brotherhood of Firemen, Oilers, Helpers, Power Plant, Roundhouse and Railway Shop Employees. The question before me is whether the work ought to have been assigned to persons in the bargaining unit represented by the Brotherhood of Maintenance of Way Employees, and in particular whether it should have been assigned to the grievors.

It may be that the work in question would come within the scope of the bargaining unit represented by the Brotherhood of Maintenance of Way Employees, and also within the scope of the unit represented by the International Brotherhood of Firemen, Oilers, Helpers, Power Plant, Roundhouse and Railway Shop Employees. However this may be, any jurisdictional difficulties thus arising would have to be resolved in some other forum, since my jurisdiction arises only under the particular collective agreement before me. In this agreement, section 14 provides as follows:

> "Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the Maintenance of Way Department, nor will maintenance of Way employees be required to do any work except such as pertains to his division or department of maintenance of way service."

Under this provision, if the work here in question "properly belonged" to the Maintenance of Way Department, then it should not have been assigned to employees outside of the Maintenance of Way service.

The Union relies on Clause 1 of Section 1 of the collective agreement, which reads:

> "1. By Maintenance of Way Employees is meant employees working in the Track and Bridge and Building Departments, for whom rates of pay are provided in the schedule, who have accumulated 65 working days' service within the preceding twenty-four months, or who can show evidence of six months' experience in similar work on any railway mentioned in the preamble of this agreement."

The schedule there referred to includes classifications of employees who might be expected to perform work of the sort here in question. That is, the bargaining unit, as defined, appears broad enough to include persons performing this work. These classifications, however, have meaning only in the context of this particular bargaining unit and the employees coming within it. In fact, the

work in question has not been performed at the Angus Shops by persons coming within this unit, although it may be that similar work has been performed by persons coming within this unit at other locations. At Angus Shop this work has for many years been performed by trouble gang employees. lt has not been shown, therefore, that the work, as performed at Angus Shops, "properly belongs" to the Maintenance of Way Department, and for this reason the grievance cannot succeed.

The grievance is accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR