CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 246

Heard at Montreal, Thursday, October 15th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims the Company violated Article 10.5 of Agreement 5.1 when it removed the work of compiling payrolls for supervisory personnel from employees covered by the Agreement at Edmonton, Alberta, and assigned such work to non-organized employees.

JOINT STATEMENT OF ISSUE:

Prior to April 1, 1970 when the engineering functions at Calgary and Edmonton were merged, time reports on the Edmonton Area for non-schedule and management employees were prepared by a non-schedule employee while on Calgary Area time reports for all employees were prepared by a clerk within the bargaining unit. After the merger the preparation of time reports for non-schedule and management employees on the former Calgary Area was removed from the clerk and assigned to a non-schedule employee.

The Brotherhood grieved and contends that the preparation of time documents for all employees is clerical work which should be performed by an employee in the bargaining unit. The Company has denied this claim.

| FOR THE EMPLOYEES: | FOR THE COM?ANY: |
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| (SGD.) J. A. PELLETIER | (SGD.) K. L. CRUMP |
| EXECUTIVE VICE-PRESIDENT | ASST. VICE-PRESIDENT LABOUR RELATIONS |

There appeared on behalf of the Company:

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| D. O. McGrath | System Labour Relations Officer, C.N.R. Montreal |
| J. A. Cameron | Labour Relations Assistant, C.N.R. Edmonton |
| M. A. Matheson | Labour Relations Assistant, C.N.R. Montreal |
| D. Matthews | Labour Relations Assistant, C.N.R. Moncton |

And on behalf of the Brotherhood:

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| J. A. Pelletier | Executive Vice President, CBRT&GW, Montreal |

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| R. | Henham | Regional Vice President, CBRT&GW, Vancouver |
| H. L. | Critchley | Representative, CBRT&GW, Edmonton |
| W. C. | Vance | Representative, CBRT&GW, Moncton |

AWARD OF THE ARBITRATOR

Article 10.5 of the collective agreement includes a list of those classes of employees in the company's Mountain Region coming within the bargaining unit. Prior to the merger of engineering functions referred to in the Joint Statement of Issue, the work of preparing certain time reports in the Calgary Area was performed by a person coming within the bargaining unit. At the same time, in the Edmonton Area, similar work was performed by an employee not covered by the collective agreement. That state of events did not, in my view, involve any violation of the collective agreement. The question of inclusion in or exclusion from the bargaing unit is a different question from that of assigning particular work to any person.

Following the merger, the Calgary engineering office staff was moved into the Edmonton office. The total work of processing time reports was then divided, not on an area basis, as formerly, but on a classification basis, the time reports for management personnel being handled by non-scheduled employees, while those of persons in the bargaining unit and of other non-management personnel where handled by scheduled employees. In the combined operation, this would appear to have resulted in a net increase in the number of cards handled by scheduled employees, over that which they had handled in Calgary. In any event, the change neither increased nor decreased either the scheduled or non-scheduled staff.

The company's reason for dividing the work in this way was that it felt it was not desirable that an employee deal directly with salary information relating to his own immediate superior. The argument at the hearing dealt in part with whether such information was "confidential." Certainly it would be confidential in the sense that it would be improper for any employee to divulge or comment on the employer's business outside the scope of his employment. But it is not confidential in the sense that there is any overriding policy against giving access to such information to employees coming within a bargaining unit represented by a trade union. Indeed, the company agreed that the information was not confidential in this sense, and pointed out that members of the bargaining unit did indeed have access to such information; it was only with respect to the salaries of those with whom an employee was closely concered that it was felt the information should not be handled by a bargaining unit employee.

In my view, it is not necessary for me to pass any judgment upon the company's reason for making its assignment of work in this fashion. The question is simply whether, in making the assignment, the company has violated article 10.5 of the collective agreement. That article describes the classes of employees that are included in the bargaining unit. The company has assigned a type of work, formerly performed by an employee in the bargaining unit at Calgary, to an employee outside of the unit. It appears that in some other locations, similar work is performed by bargaining-unit employees,

while in other locations it is not. The bargaining unit is made up of employees in the listed classifications. What the company does in assigning work does not alter the definition of the bargaining unit. In assigning work the company may, as a matter of fact, affect a person's classification, and then the question may arise whether that person thereby comes within the bargaining unit. In the instant case the work in question is now handled, at Edmonton, by an employee in an excluded classification. It does not appear from the material before me that the employee doing the work has in fact come within one of the classification included in the bargaining unit. On other facts, it might be that such a conclusion was justified. For an example, reference is made to the Fittings Ltd. case, 20 L.C. 249.

The mere assignment of work which might be performed by a member of the bargaining unit does not, however, constitute a violation of the collective agreement in the absence of express provision in the agreement to that effect. Article 10.5 contains a list of the classifications forming the bargaining unit; it does not contain restrictions relating to the assignment of work.

There has been no violation of the collective agreement, and accordingly the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR