CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.288

Heard at Montreal, Tuesday, June 8th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

1. The Union alleges the Company violated Section 2, Clause (h) of Wage Agreement No. 10.6 when Section Forces were used to cut rail ends on Saturday, August 29, 1970. The claim is for two hours at time and one-half on behalf of Welder D.J. Bloomfield and Welder Helper J.F. Bygrove. Section 2, Clause (h) reads as follows:

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

JOINT STATEMENT OF ISSUE:

2. The work assigned to the section forces on the day in question involved the putting through of a piece of track at mile 0.87, Point Edward Spur, and the relocation of a crossing. A Part of this assignment included the cutting of four pieces of rail.

3. Section forces covered by Wage Agreement No. 14 performed all of the work involved in the assignment, including the cutting of rail, whereas the Union is alleging that, that portion of the assignment consisting of the cutting of rail should have been performed by Welders covered by Wage Agreement No. 10.6. Both Agreements are with the Brotherhood of Maintenance of Way Employees.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. A. LEGROS SYSTEM FEDERATION GENERAL CHAIRMAN	(SGD.) K. L CRUMP ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

W. H. Barton - System Labour Relations Officer, C.N.R., Mtl.
W. E. Fletcher - Roadmaster, C.N.R., Sarnia

And on behalf of the Brotherhood:

P. A. Legros - System Federation General Chairman, B.M.W.E.,
W. M. Thompson - Vice President, B.M.W.E., Ottawa
W. H. Montgomery - General Chairman, B.M.W.E., Woodstock

AWARD OF THE ARBITRATOR

Collective Agreement 10.6 covers certain classifications of employees, including welders. Article 2 (h) provides for the assignment of work on unassigned days. The work here in question was performed on an unassigned day, as far as welders were concerned, and there is no question with respect to available laid off or unassigned employees. The work ought therefore to have been assigned to "the regular employee". The question is whether the grievor was in fact the regular employee with respect to the work in question.

The grievor (and the decision should be taken as applying, with the necessary changes, to the helper), is a welder. Certainly the work in question, cutting steel rails, with an acetylene torch, is work which comes within the scope of a welder's trade. It may be, however, that someone coming within another bargaining unit would possess the necessary skills and qualifications to perform such work, and could be considered the regular employee with respect to it. In fact, the work in question was done by an employee covered by collective agreement 14, made between the same parties with respect to a different bargaining unit.

It is true that the collective agreement does not state that only welders may cut rail. Of course, if the agreement so stated, that would be the end of the matter. The absence of such a provision, however, does not prevent the union from showing, if it can, that welders are in fact the "regular employees" performing the work in question, and that it has in fact been exclusively assigned to them. That is a difficult question, since in this case it is asserted on the one hand that the work has customarily and traditionally been assigned to Welders, and on the other hand that section forces have, for over twenty years, made use of acetylene torches for such tasks as cutting rails and bolts where this has been necessary from time to time.

In support of the company's position is its assertion, above noted, that section crews have performed such work over the years, that there are many other classes of employees who may, in the course of their owr jobs, make use of an acetylene torch, and that the equipment is regularly assigned to section gangs. Further, it is to be noted that the work in question appears to have been that of simple cutting only, and occupied only a slight time. In support of the union's position is the fact that the equipment used is certainly welding equipment for the operation of which certain skills are required, and that the work comes within the scope of a welder's job. Neither of these considerations, however, goes to show that the work was exclusively welder's work. Indeed, it may easily be granted that this work comes within that traditionally assigned to welders, without requiring the conclusion that it might not also be performed

by others in certain circumstances. The most telling consideration in favour of the union's case is the acknowledgment by the company in a letter dated March 12, 1970 relating to a similar grievance, that work such as this (in that case, cutting bolts) would normally be performed by a welder. It must be noted, however, that even in that case the company did not pay the grievor's claim, saying that it was an "emergency situation" - although in that case as in this it would, in my view, be straining the language to describe what occurred as an "emergency". In any event, it seems that there are indeed situations in which other classes of employees perform certain limited tasks which fall within the scope of welders' work. I am unable to say, on the evidence before me, that work such as this, having regard to the circumstances and the amount of work involved, belonged exclusively to welders. Some tasks may well do so, but it has not been established in this particular case that a welder was the only person who could be called the "regular employee" under Article 2 (h) of the collective agreement.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR