CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 337

Heard at Montreal, Tuesday, February 8th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood contends that Articles 1.2, 1.11, 2.1, 5.1 and 10.6 of Agreement 5.1 were violated.

JOINT STATEMENT OF ISSUE:

On Saturday, July 10, 1971, a derailment causing damage to track and two (2) bridges occurred on the Sydney Subdivision. As emergency repairs were necessary, the Engineering Department ordered five (5) Bridge and Building employees to report to the Moncton General Stores Lumber Yard to load emergency material for shipment to the scene of the derailment.

The Brotherhood contends the work of loading and shipping the material should have been performed by Stores Department employees represent by them and that five such employees should be paid 5 1/2 hours each at overtime rates account not called. The Company denied these claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J., A. PELLETIER	(SGD.) K. L. CRUMP
EXECUTIVE VICE-PRESIDENT	ASSISTANT VICE PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	System Labour Relations Officer, C.N.R., Montreal
A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
L. V. Collard	Employee Relations Officer, Purchases & Stores, CNR, Montreal
E. A. Boucher	Personnel Assistant, C.N.R., Montreal

And on behalf of the Brotherhood:

W. C. Vance	Representative, C.B.R.T., Moncton

F. Wedge Local Chairman, Local 5, CBRT, Moncton

AWARD OF THE ARBITRATOR

The day in question was a rest day for the grievors. On that day, employees of the Engineering Department worked from 1830 to 2400 hours loading a quantity of bridge timber at Moncton Stores Lumber Yard for shipment to the derailment scene. This is the sort of work which, admittedly, is generally performed by members of the Purchasing and Stores Department, that is, by members of the bargaining unit covered by collective agreement 5.1.

In the normal course, employees other than those in the bargaining unit do not perform work of this sort. It seems that in the course of their proper work, these other employees may from time to time obtain their own material from Stores Department premises. From the Company's own statements, it would appear that this is done in case of emergency, or where "one or two emergency items" are required. Such situations are to be distinguished, in my view, from those in which employees from another department perform what would be a substantial part of a day's work of a member of the Stores Department. The fact that the work was required to be done on a rest day is not, I think, significant. Where Stores Department employees were unavailable or unwilling to do the work, then of course different considerations would arise, but it has not been shown that that was the case here.

This is not, of course, a case of the performance of work by Supervisors, nor is it, strictly speaking, a case of "contracting out", although it is in a way analogous to such situations. As has been said in a number of earlier cases decided in the Canadian Railway Office of Arbitration, often with reference to the Fittings Limited case, 20 L.A.C. 249, the question which really arises is whether the person performing the work is, by reason of the sort of work performed, in fact a member of the bargaining unit, regardless of his ostensible job classification. It was suggested in that case, and it remains my view, that the argument that the collective agreement deals with people rather than jobs involves a false dichotomy. The collective agreement deals with terms and conditions of work of people performing certain jobs. In the Fittings Limited case, an office worker was assigned to certain "production" work, and it was held that he lost his character of office worker to the extent that he performed production work. A similar conclusion must be reached in this case. The employees who performed the work of loading bridge timber at Moncton Stores Lumber Yard on the day in question were not acting within the scope of their employment as Engineering Department employees, but were in fact acting as Stores Department Employees. In this, they usurped, contrary to the collective agreement the jobs of persons regularly employed in the stores department. This conclusion, it should be emphasized, is based on the particular circumstance of this case.

It is true, as stated by the Company in its final answer to the

grievance, that there is nothing in the collective agreement requiring Stores Department employees to be called out during their off hours to load equipment in emergencies. The fact is, however, that the Company did require such work to be done on the occasion in question. The persons performing it are subject to the provisions of the collective agreement, and employees covered by the agreement, such as the grievors in the instant case, are entitled to claim that such work has been improperly assigned. Such is the instant case.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR