CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 338

Heard at Montreal, Tuesday, February 8th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EXPARTE

DISPUTE:

The Brotherhood claims that Mr. Clarence A. McNaughton, employed as a Classified Labourer at the Port Mann Car Shop, was unfairly treated when the Company failed to call him to perform the duties of a Bull Cook.

EMPLOYEES' STATEMENT OF ISSUE:

Mr. McNaughton's name was on the auxiliary list and he was available for spare work as a Bull Cook in the event the regular assigned man is not available or cannot be contacted by telephone. On several occasions, Mr. McNaughton worked as a spare Bull Cook on and if and when required basis However, on December 15, 1970, a wrecking outfit was called and rather than call Mr. McNaughton to accompany the wrecking outfit as a Bull Cook, another employee, namely Mr. J. M. McDonald who is also a Classified Labourer but whose name was not carried on the auxiliary list, was called in his stead.

Between December 15 and 23 inclusive 1970, Mr. McDonald worked 133 1/2 hours overtime.

The Brotherhood claims that Mr. McNaughton was entitled to the work and that he should be paid 133 1/2 hours at one and one half times his regular hourly rate which is $2.62 per hour.

The Company contends that the position of Bull Cook in auxiliary service is not provided for under Agreement 5.1 and that the duties of a Bull Cook are coupled with the duties of a Car Man Helper. The Company denied payment of the claim.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE PRESIDENT

There appeared on behalf of the Company:

D. O. McGrath	System Labour Relations Officer, C.N.R., Mtl.
A. D. Andrew	System Labour Relations Officer, C.N.R., Mtl.
G. W. Astley	Supt. Equipment, C.N.R., Vancouver
W. B. Garbutt	Assistant Foreman, C.N.R., Port Mann
R. J. Clarke	Agreements Assistant, C.N.R., Edmonton

And on behalf of the Brotherhood:

R. Henham	Regional Vice President, C.B.R.T., Vancouver
L. V. Torrance	Local Chairman, Local 226, C.B.R.T., Vancouver

AWARD OF THE ARBITRATOR

The Company, at the hearing of this matter, raised a preliminary objection as to its arbitrability which will be dealt with first in this award. It is said that the grievance contains a fundamental Jurisdictional dispute between two Unions, the Canadian Brotherhood of Railway, Transport and General Workers (which represents the grievor and is the trade union party to these proceedings), and the Brotherhood of Railway Carmen of the United States and Canada (which is not a party to these proceedings). The Company's position is that for the grievor's claim to succeed, it must first be established that his bargaining unit is "entitled" to the work in question, and that consequently, there can be no conclusive settlement of the grievance without first resolving the issue of Union Jurisdiction. With respect, however, this conclusion does not follow from the stated premise, unless a special meaning is given to the phrases "conclusive settlement" and "the issue of Union jurisdiction".

My Jurisdiction, and my obligation, is to hear and determine grievances arising under collective agreements containing a provision by which grievances may be referred to the Canadian Railway Office of Arbitration for final determination. In the instant case, the trade union alleges a violation of collective agreement 5.1. My Jurisdiction is limited to determining whether or not there has been a violation of that agreement, and making the appropriate award. In a proper case, there might be a flnding that certain work "belonged" to the trade union representing the employees in the bargaining unit covered by collective agreement. That might loosely be described as a finding that the trade union had "jurisdiction" with respect to such work. It is essential to note, however, that such a finding would be binding only as between the parties, and would be a determination of rights arising only under collective agreement 5.1. It would have no binding effect on the Brotherhood of Railway Carmen or on anyone other than the parties to collective agreement 5.1, in that capacity. Thus, the finding for the purposes of this case that the work in question came within the scope of collective agreement 5.1 would permit the final determination of this grievance, but it would not involve any "conclusive settlement" of the "issue of Union jurisdiction", where the latter is considered as a contest between two or more trade unions. Certainly I have no jurisdiction to decide any such issue. It may be that there is another forum before which a

"jurisdictional dispute" involving claims by competing trade unions for certain work may be brought. The instant case, however, does not involve such a claim, although it may be that the trade union referred to are in fact in dispute over the matter. The instant case is simply the claim by Mr. McNaughton in respect of certain work. It is a claim which must be resolved having regard to the provisions of collective agreement 5.1 and the particular facts of the case. Perhaps another employee, in another bargaining unit, has a claim with respect to the same work. Perhaps, even, the Company has entered into collective agreements with conflicting or overlapping provisions in this regard. That would be an unfortunate situation, but it is not an inconceivable one. It would point up the desirability of a system for resolving "Jurisdictional disputes". But, if that is the situation it does not at all affect my obligation to hear and determine the particular claim before me. This claim is one which is clearly within my Jurisdiction, and the preliminary objection must therefore be over ruled.

The Company next argued that the work in question did not come within the scope of collective agreement 5.1, but that it was work which ought properly to be assigned to members of the Brotherhood of Railway Carmen, pursuant to a collective agreement with that organization. This position, it may be observed, was taken after the fact, the work in question actually having been assigned to another employee covered by collective agreement 5.1, who had performed such work for a number of years in the past. At Port Mann, it would seem to have been a usual, if not invariable practice for members of the bargaining unit covered by collective agreement 5.1 to perform this work. The classification involved is that of labourer (the term "bull cook" being merely a colloquialism to identify an individual who helps with cooking duties), and this classification would appear, from an examination of the appropriate provisions of collective agreement 5.1, to come within its scope. At Port Mann, although not, it seems, elsewhere, it has been recognized that members of the bargaining unit act as "bull cooks". It is accordingly my conclusion that at least in the circumstances of this case the work in question was properly assigned (as indeed it was assigned) to a member of the bargaining unit covered by collective agreement 5.1, and that the grievor, as a member of such unit and having an appropriate classification, was entitled to advance a claim with respect to such work.

The issue now to be determined is whether the grievance is entitled to succeed on its merits. The statement in the employee statement of issue that the grievor was "on the auxiliary list" and available for spare work as a bull cook was denied by the Company and was not established by any material furnished by the Union. lt seems that the grievor was tried out on at least one occasion as a bull cook, and the Company stated that it would be willing to try him again, but was unwilling to use him for the substantial amount of work which was involved in this case. If in fact the grievor had been "approved" and was listed as an auxiliary bull cook, then no steps were taken to change this status and I would agree that his grievance should succeed. But, from the material before me, it is clear that he never achieved that status, and that his claim is really only based on his hope of being assigned to such work. He had no claim of entitlement to it, and certainly not against the experienced employee who was

assigned.

For this reason, therefore, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR