CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 432

Heard at Montreal, Tuesday, January 8th, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that Stores Laborer A. Smith, Toronto, should be paid the rate of pay of a B & B Painter for a total of eight hours worked painting Shipping Room tables on January 29, 30 and February 1st, 1973.

JOINT STATEMENT OF ISSUE:

On January 29, 30 and February 1, 1973, Mr. A. Smith, a Stores Laborer at Toronto, was assigned to paint Shipping Room tables for a total of eight hours over the three-day period for which he was compensated at his regular rate of pay of a Stores Laborer.

A claim by the Brotherhood was laid that for the duty of painting the Shipping Room tables Mr. Smith should have been compensated at the rate of pay of a B & B Painter. In this grievance, the Brotherhood claims that the Company violated the provisions of Article 21.1 of Agreement 5.1.

The Company denies this claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) G. H. BLOOMFIELD
NATIONAL VICE-PRESIDENT	LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal
L. V. Collard	Employee Relations Officer, Purchases & Store Dept., Mtl.
K. Whelan	General Store Keeper, Purchases & Store Dept., CNR, Tor.

And on behalf of the Brotherhood:

J. D. Hunter	Regional Vice President, C.B.R.T., Toronto

The work of painting to which Mr. Smith was assigned on the occasions in question was not difficult and consisted of applying paint to certain roughly constructed shipping room tables. Work of this sort has been assigned to persons classified as Stores Labourer from time to time in the past. On one of the days when Mr. Smith performed this work he was working as a Stores Checker, for which he was paid a higher rate than that of Stores Labourer, and he continued to receive this higher rate in respect of the time he spent painting that day.

The classification of Stores Labourer is the highest-rated of three labourer classifications covered by the collective agreement. A Job bulletin for the classification of "Labourer" shows the duties as "Loading, unloading and storing materials. Other related duties as assigned". This description is broad enough and general enough to include tasks relating to the preparation and maintenance of the work area, and could include certain limited painting work such as that in question here. Such assignments have been a part of the job in the past, and the work involved, while it certainly would come within the scope of a Painter's classification, was not such as to call for the exercise of the more important skills of that trade. The performance of this limited work did not constitute Mr. Smith a Painter, but was within the scope of the existing classification of Stores Labourer.

Article 21.1 of the collective agreement is as follows.

> "21.1 An employee temporarily assigned for one hour or more, cumulative, in any one day, to a higher rated position, shall receive the higher rate while occupying such position, due regard being had to apprentice or graded rates. An employee temporarily assigned to a lower rated position shall not have his rate reduced."

In my view, the reference in Article 21 to a "higher rated position" is a reference to positions coming under this collective agreement. Even if it were found that Mr. Smith had in fact been assigned as a "Painter" then, it would not follow that he was entitled to be paid at the rate set out for Painters in some other collective agreement. Where employees in this bargaining unit are in fact assigned to perform what are substantially the duties of a job falling within some other bargaining unit, and where there is no corresponding classification under this agreement, then (barring the situation where the employee might actually be said to come within the other unit), it may be that for reasons of convenience or otherwise the rate for that work in the other agreement would be considered appropriate. That has been done as between these parties, it was said, in the case of Welders.

Failing such an informal arrangement, then where an assignment of tasks amounts to the establishment of a new job or position, the proper course to follow with respect to the establishing of the classification and its rate is set out in Article 29 of the collective agreement. Again, in establishing a rate for a new job under that section, regard might be had to the rates paid for similar jobs under other agreemments, but in each case of course, the rate is part of a rate structure separately negotiated. In some cases, the

same job may appear under different agreements, carrying different rates, as was remarked, for example, in Case No. 421.

In the instant case, it cannot, on the material before me, be said that the work in question placed Mr. Smith within the classification of "Painter" under any other collective agreement, and it was not argued that his job was a new one under the collective agreement. On the contrary, it appears that the job was not new, and that the work had come within the scope of the classification for some time. There has been no violation of Article 21.1.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR