CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 640

Heard at Montreal, Tuesday, November 8th, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claims submitted on behalf of the following for payment at rate of time and one half for time worked in excess of five consecutive days:

G. Ouvrard	4 hours	Oct. 15, 1976
	8 hours	Oct. 16, 1976
C. Proulx	8 hours	Oct. 16, 1976
P. Fleury	8 hours	Oct. 16, 1976
H. McDade	S hours	Oct. 16, 1976
C. Clarkson	8 hours	Oct. 17, 1976

JOINT STATEMENT OF ISSUE:

The Union contends that the time and one half payment claimed is in accordance with Articles 9.2 and 11.5 of the Collective Agreement.

The Company disagrees.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W. T. SWAlN	(SGD.) C. L. PIMLOTT
GENERAL CHAIRMAN	(for) OPERATIONS DIRECTOR - INFORMATION SYSTEMS

There appeared on behalf of the Company:

D. Cardi	-	Labour Relations Officer, CP Rail, Montreal
G.M. Booth	-	Personnel Officer, Finance & Accounting,CP Limited, Mtl.
L.J. Megin	-	Services Supervisor,Information Systems, CP Limited, Mtl.
J.T. Sparrow	-	Manager, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood..

W.T. Swain	-	General Chairman, B.R.A.C., Montreal
D. Herbatuk	-	Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

Article 9.2 of the collective agreement provides as follows:

> "9.2 Work in excess of forty straight-time hours or five days in any work week shall be considered overtime and paid for at the rate of time and one-half, except where such work is performed by an employee due to moving from one assignment to another other than at the instance of the Company, or to or from an extra or laid-off list or where rest days are being accumulated under Article 11."

Here, as the joint statement indicates, the grievors did work in excess of forty hours in a work week. This was due, however, to the employees having moved from one assignment to another. The queation is whether such moves were "other than at the instance of the Company".

The moves from one assignment to another were a result of the posting of some eight positions, replacing eight positions which had been abolished (all as a result of the abolishment and non-replacement of one computer controller position). The new positions involved somewhat different hours of work and days off from those they replaced. The grievors had been in the old positions, and had bid on the new ones. Their new positions having different hours and days off, the result was that in the first week they worked more than the forty hours referred to in Article 9.2.
The situations, in which certain jobs were abolished and new ones established, was one which was created by the Company. That is not to say, however, that the moves from one assignment to another made by those employees whose jobs were abolished and who bid on new jobs were moves made "at the instance of the Company". Although the word "instance" is not exactly synonymous with the terms "command" "direction" or "instruction", being broad enough, I think, to cover situations where this mandatory element may be lacking, it does not include situations where an employee bids on a posted job. While the employees may have felt constrained to bid in the particular situation, that was simply the nature of the situation, and the employer, as such did not call on any individual to perform the work of any particular assignment.

In this case, then, the moves in question were "other than at the instance of the Company", so that the matter comes within the exception to the general requirements of Article 9.2.

Article 11.5 deals with work on regularly assigned rest days. The allegation that there was a violation of this article was not pressed by the Union at the hearing. It is sufficient to note that any "rest days" on which the grievors worked were former rest days, days which had been regularly assigned rest days under their previous assignments, but which were so no longer. There does not appear, then, to have been any violation of Article 11.5.

For the foregoing reasons the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR