CASE NO.727

Heard at Montreal, Tuesday, November 13,1979

Concerning

CANADlAN PACIFlC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AlRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPPLOYEES - SYSTEM BOARD OF ADJ.#517

DISPUTE:

Concerning overtime allocation as per Article 13.8 of the Agreement.

JOlNT STATEMENT OF ISSUE:

September 12 1978, temporary bulletin No 102, was posted for the position of Vehicleman (Tractor-Trailer Operator), 1600 to 0030 hours, rest days Saturday and Sunday for a duration of four to six weeks. This position was regularly held by R. Filiatrault, seniority date June 5, 1967. The temporary bulletin No. 102 was necessitated by the fact that R. Filiatrault left his regular position to cover a temporary bulletin on the day shift for the period September 5th to October 23rd, 1978.

The temporary position described in bulletin No. 102 was awarded to R. Mercille, seniority date July 7, 1964, and he commenced work on that position on October 2, 1978. Mr. Mercille's regular bulletined position is that of Vehicleman (Tractor-Trailer Operator) (0800 - 1700 hrs.). The overtime in dispute occurred November 1, 1978. Employee R. Filiatrault returned to his regular position on October 23rd. 1978.

The Brotherhood contends employee R. Mercille should have been returned to his regular bulletined position, that of Vehicleman (Tractor- Trailer Operator) 0800 to 1700 hrs., on the date employee R. Filiatrault returned to his regular position.

The Company contends there was no requirement under the collective agreement for R. Mercille to return to his regular position and that in allotting the overtime to employee R. Mercille instead of R. Filiatrault, it acted in conformity with the collective agreement.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. J. BOYCE General Chairman	(Sgd.) D.R. SMITH Director, Labour Relations, Personnel and Administration

There appeared on behalf of the Company:

D. R. Smith — Director Labour Rel's & Admn.,CP Express,

	Toronto
J.L.S.Brunnelle	Regional Manager, CP Express, Montreal
S. J.Samosinski	Labour Relations Officer, CP Rail, Montreal
B. D.Neil	Manager, Labour Relations, CP Express, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	General Chairman, B.R.A.C., Toronto
J. Crabb	Vice General Chalrman, B.R.A.C., Toronto
F. W. McNeely	General Secretary Treasurer, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

The position in question involved working as part of a pool of 8 Vehiclemen (Tractor-Trailer Operators), and the temporary vacancy arose when Mr. Filiatrault bid successfully on a temporary vacancy in another position.

lt might have been that when Mr. Filiatrault returned to his position of Vehicleman the Company no longer needed to fill a temporary vacancy and Mr. Mercille, who had been appointed on the vacancy created by Mr. Filiatrault's leaving, would have returned to his original position. In that case, of course, Mr. Mercille would not have been allocated any overtime as a Vehicleman. One of the Vehiclemen - not necessarily Mr. Filiatrault - would have been assigned it.

That was not, however, the case. The Company found it necessary to retain Mr. Mercille on the temporary vacancy(this was still within the period contemplated in the bulletin on the vacancy) because other Vehiclemen were then absent, one on vacation, one by reason of sickness. Thus, the vacancy - the requirement for a Vehicleman on a temporary basis - still existed even if there was then a different cause for its existence. There was work to be done, and Mr. Mercille was properly kept on to do it, in accordance with the bulletin on which he had applied.

When, during the period When Mr. Mercille was on the job by reason of the temporary posting, overtime work arose, the Company was obliged to allocate it on the basis of seniority, in accordance with and subject to Article 13.8 of the collective agreement. At the material times, Mr. Mercille was within the appropriate work classification and shift, and was entitled to the same consideration as any other employee in such circumstances. He had greater seniority than Mr. Filiatrault. He was entitled, therefore - at least as against Mr. Filiatrault - to the allocation of the overtime in question.

There was, therefore, no violation of the collective agreement, and the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR