

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 910

Heard at Montreal, Tuesday, February 9, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
ATLANTIC REGION

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that the Company violated Section 32.3 of Wage Agreement No. 17 when it used forces outside of the maintenance of way service to repair the drop table on track 9 at the Diesel Shop in St. Luc Yard in November 1980. Claim is in favour of B&B Welder Gilles Fortin for two weeks pay at the B&B Welder straight time rate of pay.

JOINT STATEMENT OF ISSUE:

In November 1980 the drop table on track 9 at the St. Luc Diesel Shop was damaged. The Company assigned employees outside the maintenance of way service (2 Diesel Shop Welders) to perform Welders' work repairing the structure at a time when the grievor was laid-off.

The Union contends that since repairs and maintenance to the drop table has been customarily and historically performed by the B&B Department, the Company should have recalled the grievor to perform this service.

The Company contends that:

- i) this work does not properly belong to the Maintenance of Way Department and;
- ii) the damage to the drop table resulted in a case of emergency or temporary urgency.

FOR THE EMPLOYEE:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER,
OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

I. J. Waddell	- Labour Relations Officer, Montreal
B. A. Demers	- Supervisor, Labour Relations, Montreal
C. Muir	- Manager, St. Luc Diesel Shop, Montreal

And on behalf of the Employee:

H. J. Thiessen - System Federation General Chairman, Ottawa
L. DiMassimo - General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 32.3 of the Collective Agreement is as follows:

"Performance of Maintenance of Way Work
by Employees outside of Department

32.3 Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any work except such as pertains to his division or department of maintenance of way service."

While the work in question might have been considered an "emergency", it could not be handled as such, since it was necessary to await delivery of certain supplies before the work could be done. Laid-off members of the bargaining unit could therefore have been called to do the work.

The substantial issue in this case is whether or not the work in question "properly belonged" to the maintenance of way department.

There is no doubt that members of the bargaining unit would be qualified to do the work. The same may be said, no doubt, with respect to those members of another bargaining unit who were assigned to it. Further, it is clear that on many of the occasions in the past when work has been required on the drop table, members of the bargaining unit have been assigned such work. Work on the drop table, however, may relate to one or more aspects of that equipment, even although it may properly be regarded as one piece of machinery. Part of the repairs required in the instant case (repairs to the lifting piston) were carried out by members of the bargaining unit. This was proper, as that group had historically carried out such work. There is a direct and regular involvement with the equipment on the part of bargaining unit members, who inspect it regularly.

The evidence is, however, that while bargaining unit members do work on some aspects of the drop table, they do not and have not usually performed the work in issue here, namely the welding of the platform. That work has, on the material before me, usually been done by shopcraft employees, members of another bargaining unit.

It has not been shown, then, that the particular work in question - work on the platform of the drop table - "properly belonged" to the maintenance of way department. There has, then, been no violation of the Collective Agreement and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.