CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1003

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The utilizing of Drake Agency when employee D. Roach, Obico Terminal was on a laid off position, and the refusal by the Company to bulletin said position as per Article 7.2.1.

EMPLOYEES' STATEMENT OF ISSUE:

The use of Drake Agency being employed by the Company to perform duties in the Accounting Division and further employee D. Roach was refused her displacement rights under the Agreement and put on a lay off status due to this Company's decision.

The Brotherhood claimed the hours the Agency performed in the name of employee D. Roach and further requested to bulletin said position as per Article 7.2.1.

The Company declined on both requests.

FOR THE BROTHERHOOD:

(SGD..) J. J. BOYCE
General Chairman, System Board of
Adjustment No. 517.

DISPUTE:

The utilization of Drake Agency personnel while employee D. Roach, CP Express, Toronto was laid off and the refusal of the Company to bulletin this work in accordance with Article 7.2.1.

COMPANY STATEMENT OF ISSUE:

Drake Agency personnel were utilized by the Company to perform additional duties brought about by the impending computerization of the Accounting Department. Employee D. Roach had previously been disqualified from exercising her seniority in the Accounting Department account demonstrated lack of skill.

The Brotherhood claimed that employee D. Roach should have been allowed to displace on to this work and that this work should have been bulletined in accordance with Article 7.2.1.

The Company declined the Union's request.

FOR THE COMPANY:

(SGD.) D. R. SMITH
Director, Industrial Relations,
Personnel & Administration.

There appeared on behalf of the Company:

D. R. Smith	- Director, Labour Relations & Administration, CP Express, Toronto
B. D. Neill	- Manager, Labour Relations, CP Express, Toronto
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	- General Chairman, System Board of Adjustment No. 517, BRAC, Toronto
Jack Crabb	- Vice-General Chairman, BRAC, Toronto
M. Gauthier	- Vice-General Chairman, BRAC, Toronto

AWARD OF THE ARBITRATOR

The grievor, a Customer Service Clerk, was issued a job abolishment notice as her position was no longer required. There is no issue before me as to that. She then sought to exercise her seniority, and was advised there was a position of Accounts Clerk available, if she could qualify. This position required the use of an adding machine. The grievor, who had not used an adding machine, was given a test and it was concluded that the grievor was not qualified for the position.

From the material before me, the test would appear to have been a standard test, fairly administered. Under the Collective Agreement, the Company is to be the judge of matters of qualification, and in this case the Company concluded that the grievor was not qualified for the position. She was not entitled to a training period, and since she was not assigned to the position by bulletin, she was not entitled to a period of time in which to demonstrate her ability.

As there was a need for work to be done in the Accounting Department, the Company contracted with an employment agency for the supply of persons to perform certain tasks in that department. If it were determined that these persons became employees of this Company, then it would be concluded that their assignment to work showed that there were vacancies which ought to have been bulletined. The material before me, however, doesnot permit that conclusion. It appears, rather, that while the persons involved were given their particular work assignments by the Company, they were otherwise under the direction and control of the agency, and paid by it. The work, that is, was "contracted-out".

The Collective Agreement does not prbhibit contracting-out. There was, then, no violation of the Collective Agreement in this respect. In view of what has been concluded above, however, it may be added that even if the contracting-out were held to be in violation of the Collective Agreement, it would not necessarily follow that any remedy

for that would be of benefit to the grievor, whose entitlement depended on her own qualifications.

There having been no violation of the Collective Agreement, the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.