CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1017

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for 8 hours at overtime rates for Messrs. N. E. Whalen, G. F. Strang and R. E. Morrell, Moncton Terminal on January 5, 6, 7 and 8, 1982.

JOINT STATEMENT OF ISSUE:

As a result of heavy snow conditions the Company utilized persons as "snow shovellers" at the Moncton Terminal on January 5, 6, 7 and 8, 1982 between 0800 and 1700 hours.

The Union contends that Sections 7.1 and 32.3 of Agreement 10.1 were violated when the Company did not assign Messrs. Whalen Strang and Morrell to this work.

The Company maintains that there was no violation of Agreement 10.1 and declines the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS	(SGD.) D. C. FRALEIGH
System Federation General Chairman	Director, Labour Relations

There appeared on behalf of the Company:

K. J. Knox	- Manager Labour Relations, CNR, Montreal
T. D. Ferens	- System Labour Relations Officer, CNR, Montreal
W. D. Agnew	- Labour Relations Officer, CNR, Moncton
H. L. Purdy	- Track and Roadway Engineer, CNR, Moncton

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
Jean J. Roach	- General Chairman, BMWE, Moncton
F. L. Stoppler	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

Article 7.1 of the Collective Agreement is as follows:

"SECTION 7

Work on Unassigned Days

7.1 Where work is required by the railways to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other cases by the regular employee."

Article 32.3 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."

The Union asserts that the Company was in violation of the Collective Agreement "by hiring people from outside the Company" to perform work "covered by the Collective Agreement" when regular employees were "available". The issue is whether or not, in the circumstances, the grievors - who were not deprived of any of their regular work - were entitled to perform the work in question.

While the Company states that it "utilized" certain persons as snow shovellers on the occasions in question, it would appear that the persons referred to were hired on a casual basis to perform work of a sort which would ordinarily be performed by members of the bargaining unit. This was not, it would seem, a case of "contracting-out", but rather a case of casual hiring of persons who became - briefly - employees of the Company. Such persons may even have come within the scope of the bargaining unit, although it may be (there were no representations on this point) that they would be excluded therefrom by virtue of Article 1.2 of the Collective Agreement.

A number of casual employees were hired for the days in question, and for other days, to supplement the normal work force for the purpose of snow removal. None of the regular employees, members of the bargaining unit, lost any regular work on that account. The claims in this case are for overtime work, and in some cases are for a third daily shift.

From the material before me, it does not appear that any of the grievors was "an available laid-off or unassigned employee" who would "otherwise not have forty hours of work" in the week in question. There was, then, no violation of Article 7 in the circumstances of this case.

As to Article 32, it would be my view that snow removal was, in the circumstances, a matter of "temporary urgency", if not of "emergency

If, then, the casual employees who were hired (without any loss of regular employment to the grievors) to perform this work were "outside of the maintenance of way department" (although it would seem that they were in that department, and may even have come within the bargaining unit as well) their assignment was not, in the circumstances of this case, in violation of Article 32.

There has, then, been no violation of the provisions referred to. The grievances, which in some cases involve claims of entitlement to twenty-four hours' work per day (in a period of high unemployment!) are dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.