CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1067

Heard at Montreal, Wednesday, April 13th, 1983
Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims the Company violated the provisions of Article 21.7 when, effective January 1, 1982, the Company ceased paying 10 cents per hour in excess of the negotiated rate for the classification of Heavy Equipment Operator in Edmonton and Calgary, Alberta. The Company denies there was a violation of Article 21.7.

JOINT STATEMENT OF ISSUE:

For approximately 10 years in Edmonton, as well as 5 years in Calgary, the Company had paid 10 cents per hour in excess of the negotiated rate for the classification of Heavy Equipment Operator in those two cities, but not elsewhere for the same position in the Company's operations. The extra 10 cents per hour paid in Calgary and Edmonton is neither the negotiated rate for such position, nor supported by any memorandum of agreement. When the Company discovered this overpayment error, it advised the Brotherhood that such payments would cease at a given future point in time. The Brotherhood alleged the Company could not cease making such payments and claimed that the Company, in so doing, was violating Article 21.7.

The Company denied the Brotherhood's claim.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:

B. Noble	- Manager Labour Relations, CNR, Montreal
K. G. McDonald	- Regional Manager Intermodal Services, CNR, Edmonton
D. W. Doughlin	- System Labour Relations Officer, CNR, Montreal
J. Little	- Labour Relations Officer, CNR, Edmonton

And on behalf of the Brotherhood:

H. L. Critchley	- Representative, CBRT&GW, Edmonton
Tom McGrath	- National Vice-President, CBRT&GW, Ottawa

Wm. H. Matthew - Regional Vice-President, CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

Article 21.7 of the Collective Agreement is as follows:

> "21.7 No change shall be made in agreed classifications or basic rates of pay for individual positions unless warranted by changed conditions resulting in changes in the character of the duties or responsibilities. When changes in classifications and/or basic rates of pay are proposed, or when it is considered that a position is improperly classified or rated, the work of the positions affected will be reviewed and compared with the duties and responsibilities of comparable positions by the proper officer of the Company and the Regional Vice-President of the Brotherhood, with the object of reaching agreement on revised classifications and/or rates to maintain uniformity for positions on which the duties and responsibilities are relatively the same."

As set out in the Joint Statement, there exists a negotiated rate for the positions in question. At Calgary and Edmonton, the Company has been paying an amount in excess of that. It is the Union's contention that the excess payment is made in respect of a requirement that Heavy Equipment Operators be qualified as Tractor Trailer Operators. Indeed, it would seem that when the classification was first established at these locations, Heavy Equipment Operators were, due to lack of work in their own classification, assigned work as Tractor Trailer Operators. The latter classification has a substantially lower rate of pay than that of Heavy Equipment Operator, however, and there would be no apparent justification for adding to the Heavy Equipment Operator's rate on that account.

The explanation for the addition appears to lie in the mistaken application to Heavy Equipment Operators of a clause which applied to Motormen, when the latter were required to act as Tractor Trailer Operators. The classification of Motorman has a lower rate than that of Tractor Trailer Operator. It would be reasonable, then, to provide a premium in respect of hours worked by Motormen as Tractor Trailer Operators. For some years, Article 28.15 (c) of the Collective Agreement provided for an additional payment of ten cents per hour for Motormen when operating tractor trailers. It would appear that the Company thought, at the times the positions in question were established, that that principle applied to Heavy Equipment Operators operating tractor trailers. Of course that was wrong.

It may be noted that Article 28.15 (c) now provides that where Motormen operate tractor trailers they are to be paid the Tractor Trailer Operators rate. The inapplicability of the provision in its present form to Heavy Equipment Operators is clear.

The case is that, as the Joint Statement sets out, a payment is being

made which is in excess of the negotiated rate for the classifica tion. On the material before me, there have not been "changed conditions resulting in changes in the character of the duties or responsibilities". There was, then, no occasion for a change in the basic rate of pay. The Company has now reverted to making the correct payment. It is not.estoppe from doing so, any more than the Union would be estopped from requiring the correct payment where, in error, a lower rate had been paid. The Company did not make the sort of representation with respect to the application of the Collective Agreement which might create an estoppel. The fact of making excessive payments is not (except, perhaps, for each particular payment at the time it is made), an implicit representation that excessive payment are appropriate, or that they are to be made in the future, and the Union and the employees, in accepting such a windfall, could not properly be said to have relied to their detriment on any such Company action.

In the instant case, the Collective Agreement does not call for payment in excess of the negotiated rate. The Company is entitled to and indeed required to pay wages in conformity with the Collective Agreement, and it is not estopped from doing so by the fact of having paid something other than the correct rate for some time.

There has been no violation of the Collective Agreement and the grievance is accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR.