CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1316.

Heard in Montreal, Tuesday, January 8th, 1985.
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Machine Operator J. P. Delisle for 23.5 hours of overtime which was assigned to Tractor Operator G. Boissoneault.

JOINT STATEMENT OF ISSUE:

On December 5, 6, 7 and 8, 1983, Tractor Operator G. Boissonneault, a C.B.R.T. & G.W. employee, who is regularly assigned to Tractor 422-94 was engaged in snow removal work at the Tashereau Yard Auto Compound.

The Union contends that the Company violated Articles 1.1, 6.1 and Appendix "A" of Agreement 10.3, as well as Section 33.3 of Agreement 10.1, when they did not assign the work to Machine Operator Delisle.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS System Federation General Chairman	(SGD.) J. R. GILMAN FOR: Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

T.D. Ferens, Manager Labour Relations, Montreal.
P.J. Thivierge, Manager Labour Relations, Montreal.
S.A. Macdougald, System Labour Relations Officer, Montreal
J. Russell, System Labour Relations Officer, Montreal.

And on behalf of the Brotherhood:

P.A. Legros, System Fed. General Chairman, BMWE, Ottawa.
R.Y. Gaudreau, Vice President, BMWE, Ottawa.
A. Toupin, General Chairman, BMWE, Montreal.
J.J. Roach, General Chairman, BMWE, Moncton.

AWARD OF THE ARBITRATOR

The principal issue in this case is whether the work in- volved in

the removal of snow at the Taschereau Yard Auto compound is bargaining unit work that properly belongs to the aggrieved trade union's bargaining unit. There is no dispute that the work was assigned to Tractor Operator G. Boissoneault, a CBRT & GW employee. The relevant provision of the collective agreement reads as follows:-

> "33.3 Except in cases of emergency or temporary urgency, employee 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 parties appeared to indicate that both Maintenance of Way and CBRT & GW employees have a history of engaging in snow removal services at the company's yards. The trade union claimed that such work was properly Maintenance of Way Department work in circumstances where the snow is removed by use of a tractor. The company, on the other hand, provided documentary proof showing that CBRT & GW employees have'used tractors in the proper perform- ance of work under that union s jurisdiction. In other words, it was clearly established that Maintenance of Way employees do not hold an exclusive monopoly on the use of tractors that are necessary in the discharge of tasks that properly belong to that union's work jurisdiction.

Indeed, the CBRT & GW agreement tends to demonstrate that snow removal is defined as part of the work jurisdiction of that trade union. This notion is demonstrated under Article 1.3 of the CBRT & GW Agreement which defines "casual help" as:-

> Those persons engaged;
> (a) On a temporary basis to shovel snow....or
> temporary work of a similar nature.
>
> emphasis added

Although it may very well be argued that snow removal work of the type described in this case is maintenance work that falls within the definition of bargaining unit work under Article 1.1 of the Maintenance of Way Agreement, it is equally clear that the same work is also contemplated under the relevant provisions of the CBRT & GW agreement. In other words, both by operation of two separate collective agreements the same work or work of a similar nature properly belongs to employees of each bargaining unit. Because of this rather unique circumstance I cannot conclude therefore that the work protection afforded by Article 33.3 of Agreement 10.1 may be applied to preserve the exclusive jurisdic- tion of the aggrieved trade union to snow removal work.

Nor is any assistance given the trade union by the suggestion that the use of tractors for snow removal purposes ought to be considered the domain of the Maintenance of Way Department. So long as the work

in dispute may be characterized as properly belonging to a particular bargaining unit (or as in this case to more than one bargaining unit) then the method or manner in which the given task is accomplished is almost extraneous.' Clearly, the CBRT & GW agreement contemplates that the shoveling of snow or work of a similar nature is properly its work. The notion that a CBRT & GW employee would make use of a tractor for snow removal purposes does not denigrate from his competence under the scope of that agreement to engage in those duties.

As a result because there appears to be a shared juris- diction by employees under both trade union agreements to dis- charge the same work I am precluded from holding that the said work properly belongs, for purposes of Article 33.3, to the Maintenance of Way Department.

The grievance is accordingly denied.

DAVID H. KATES
ARBITRATOR.