CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2050

Heard at Montreal, Wednesday, 12 September 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The hours of work assigned to a new temporary Senior Engineering Clerk position at Thunder Bay.

JOINT STATEMENT OF ISSUE:

On March 30, 1988, the Company advertised the position of Senior Engineering Clerk of Prairie Regional Bulletin No. 5, with assigned hours of 0800-1630 (lunch 1200-1230) at Thunder Bay, Ontario. The position was a newly created seasonal position with an approximate duration of May 1, 1988 to September 30, 1988.

The Brotherhood contends that Senior Engineering Clerks have historically worked 7 hours per day on the Prairie Region and, therefore, the Company violated Article 4.4 of Agreement 5.1 by establishing different hours of work for the new temporary Senior Engineering Clerk position.

The Company disagrees with the Brotherhood's contention.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) W. W. WILSON	(SGD) TOM McGRATH
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

D. McMeekin	System Labour Relations Officer, Montreal
B. R. O'Neill	Research Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli	Regional Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

The instant grievance turns on the language of Article 4.4 of the Collective Agreement which provides as follows:

> 4.4 Where it has been the practice for weekly rated employees to work less than eight hours per day, that practice shall be continued unless changed on account of conditions beyond the control of the Company. Should conditions occasionally demand, employees working such reduced hours may be required to work eight hours per day and overtime will not accrue until after eight hours' service has been performed. To take care of regular requirements such employees may be required to work extra hours on certain days and overtime shall only accrue after eight hours' service has been performed.

The thrust of the Company's position is that the foregoing article applies only to positions occupied by employees, so long as those positions continue to exist. It submits that where such a position is abolished, and a similar, if not identical position, with the same content of duties and responsibilities is established at a later time, the new position is not subject to the terms of Article 4.4.

The Arbitrator has difficulty with that submission. Article 4.4 is plainly a remedial and protective provision established to provide to employees the continuation of the practice in respect of hours of work in a day that they can normally associate with a given job or set of jobs. It seems to the Arbitrator inconsistent with the purpose of that provision if it must be construed as applying, on a one-time basis only, to positions previously established under a particular job bulletin. If that were so the article, which apparently has existed since 1919, would cease to have any significant application by dint of the periodic abolition and reorganization of positions in the work place.

In my view that was not the intention of the parties. While it is not necessary to comment more broadly than is necessary for the purposes of this case, it would seem to me that if, according to past practice, positions of Senior Engineering Clerk at Thunder Bay were for less than eight hours per day, the Company has undertaken, by agreeing to Article 4.4 to continue that practice in respect of weekly rated employees working within the general terms of that position. There is not, either in the language of the article nor by any necessary implication, any suggestion that the parties intended that temporary or seasonal positions would somehow be excluded from the application of Article 4.4.

I am satisfied that the article was intended to apply to positions, and not to individual employees. That, moreover, is not disputed by the Company. I am further satisfied that it is intended to apply to those bundles of duties and responsibilities that constitute an indentifiable position, and is not to be confined in its application to preexisting bulletined positions only. By way of example, for the purposes of clarity, if a given position of Senior Engineering Clerk involving less than an eight hour day is abolished, and one month later an identical position is established, whether on a permanent or temporary basis, the provisions of Article 4.4 of the Collective Agreement must apply. To conclude otherwise would render the article

close to meaningless.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the Company pay to the affected employees adjustments, if any, owing in respect of their wages and benefits arising from this award, for the period from May 1 to September 30, 1988, and to henceforth schedule the position in question in a manner consistent with the provisions of Article 4.4 of the Collective Agreement.

September 14, 1990

MICHEL G. PICHER
ARBITRATOR