

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2203

Heard at Montreal, Wednesday, 13 November 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Company failed to call an employee from the Bridge and Building Department to repair broken gate at Windsor Station, Montreal.

BROTHERHOOD'S STATEMENT OF ISSUE:

April 5, 1991, the gate broke at la Gauchetiŕre Street and the Company called a Security Guard to repair it instead of calling an employee from the Bridge and Building Department.

The Union contends that: 1) The Company violated Wage Agreement No. 41, by not calling an employee from the Bridge and Building Department. 2) The Company violated Article 32.3 by assigning an employee outside the Maintenance of Way service, namely the Security Guard, to repair the broken gate.

The Union requests that: The Company compensate Mr. R. Graus for three (3) hours' overtime at the rate of \$26.728, for a total of \$80.185, for April 5, 1991, and also, all the hours for 60 days retroactive if any.

The Company denies the Union's contentions and declines payment.

FOR THE BROTHERHOOD:

(SGD.) L. M. DiMASSIMO

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. T. Cooke

Labour Relations Officer, Montreal

J. C. Larente

Manager, Building Services, Montreal

J-L Durand

Assistant Manager, Building Services, Montreal

J. B. Vince

Observer

And on behalf of the Brotherhood:

L. DiMassimo

System Federation General Chairman, Ottawa

A. Passaretti

Vice-President, Ottawa

J. J. Kruk

Federation General Chairman, Sudbury

R. Graus

Grievor

#### AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Company's parking lot at Windsor Station in Montreal is accessible, in part, by a gate on la Gauchetière Street. The gate is a mechanical wooden arm which raises and lowers, under the control of a security guard stationed inside the building. It also appears that the security guard has a view of the gate by means of a remote observation camera which relays to one of twenty or so monitors at his work station. Periodically the arm of the gate is found to be broken. It is common ground that when it is damaged during normal working hours the repair of the arm is assigned to employees from the Bridge & Building Department, who work in the carpentry shop at Windsor Station. The instant grievance arises because of the practice which the Company has adopted during non-working hours. When the arm is discovered to be broken during non-working hours, generally late at night, the Company has directed one of the two security guards on duty at Windsor Station to repair the arm. The task involves loosening four bolts to release a clamp which holds the broken arm, and either inserting a new arm or, if a sufficient segment of the original arm still remains, reinserting that segment and tightening the clamp. It does not appear disputed that the operation is quite simple and would involve between ten and twenty minutes to complete. The Company does not dispute that in the normal course the repair of the arm of the electronic gate would properly be work to be performed by the Brotherhood. It relies, however, on clause 32.3 of the collective agreement which deals with the performance of maintenance of way work by employees outside the department, and provides as follows:

#### 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 Company maintains that the circumstances at hand disclose a situation of temporary urgency within the contemplation of the foregoing provision, which justify the assignment of the work to the security guards.

The parking area at Windsor Station is meant to hold a number of vehicles, including Company vehicles, during overnight hours. The very purpose of the automated gate is to prevent access to and egress from the lot without the knowledge and control of the security officers. When the gate is broken the security of the area is, to that extent, compromised. While it is arguable that the security guard on duty at the video monitoring position could cover the situation by exerting greater vigilance on the monitor when the arm is broken, pending the arrival of a bargaining unit employee being called from home to effect the repair, that is an impracticable alternative which I think, unduly, compromises security. The material before the Arbitrator discloses that the security officer is responsible for monitoring some twenty-one screens, as well as performing such other functions as his or her duties may involve. In the result, if the Union's position were accepted, a break in the functioning of the automatic barrier would represent an extension of the duration of a gap in the overall security system which the Company is reasonably entitled to establish and maintain.

The issue becomes whether the failure of a mechanized security barrier during late hours can be said to constitute a temporary urgency which would justify the assignment of a non-bargaining unit employee to perform a relatively minor repair which would otherwise belong to members of the bargaining unit. In CROA 793 the arbitrator concluded that work performed to remove two cars blocking a public crossing, which involved a maintenance engineer exercising functions which would otherwise have been those of a relief track maintenance foreman, during off-duty hours, was work falling within the exception of clause 32.3 as being a matter of ``temporary urgency''. Similarly, in CROA 1099, the assignment of snow removing work to welders, in disregard of the rights of certain laid off employees, was found to be justified under clause 32.3 as also constituting a situation of temporary urgency.

While it is neither necessary nor advisable to attempt to give any exhaustive definition to the phrase ``temporary urgency'', the Arbitrator is satisfied that the facts of the instant case do disclose such a state of affairs. For obvious reasons, the Company has chosen to establish a multi-faceted security system to protect the parking area and adjacent entrances to Windsor Station. In addition to utilizing security guards and remote cameras and monitors, it uses a number of mechanized gates to control the access and egress of vehicles to and from the area. The breaking or removal of a gate arm clearly creates a situation of urgency, to the extent that the deterrent function of the gate is lost and security is accordingly compromised. Time therefore becomes of the essence in erecting a new barrier. It is not disputed that the time involved would be considerably extended if the Company were required to summon an off-duty Bridge & Building employee from his or her residence during the night to perform the relatively simple repair required to restore the gate to a secure position. Bearing in mind that the camera monitoring system cannot be fool-proof at all times, any delay in effecting that repair necessarily involves jeopardizing the security of the Company's premises. In my view that circumstance can fairly be said to fall within the contemplation of a circumstance of ``temporary urgency'' as that phase is to be understood within the meaning of clause 32.3 of the collective agreement.

For the foregoing reasons the grievance must be dismissed

November 15, 1991

(Sgd.) MICHEL G. PICHER

ARBITRATOR