CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 245

Heard at Montreal, Thursday, October 15th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

EX PARTE

DISPUTE:

Concerning the application of a local agreement allowing Mr. D.L. Bell, classified as General Clerk – Weighman to Work on his assigned rest days, Saturday and Sunday at the applicable overtime rate of pay when necessary.

EMPLOYEES' STATEMENT OF ISSUE:

In October 1960, Mr. W.J. Kerr, Staff Supervisor, issued a notice to Office Assistants and Office Assistant General Clerks advising them that Mr. Bell was desirous to protect his regular assignment on his rest days and that they should arrange to call him when necessary.

On Sunday, February 22nd and again on March 29, 1970, the vacant position on the days referred to above was filled by an employee other than Mr. Bell.

The Brotherhood processed a claim on behalf of Mr. Bell contending that the Company had violated the provisions of the local agreement in effect and claimed that Mr. Bell be paid at the applicable overtime rate of pay.

The Company rejected the claim on the basis that Mr. Bell was not entitled to be called for this work.

It should be noted that the first grievance originated early in March and the other late in March.

New instructions cancelling the local agreement were issued on April 1, 1970.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

There appeared oh behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
M. A. Matheson	– Labour Relations Assistant, Montreal
E. Donnelly	– Labour Relations Assistant, Toronto
W. J. Kerr	– Staff Supervisor, Toronto

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice-President, Montreal
J. D. Hunter	– Regional Vice-President, Toronto
T. N. Stol	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The grievor is employed as a weighman at the Toronto Hump Yard. His assigned rest days are Saturdays and Sundays. He claims he was entitled to be called for overtime work in that classification on certain Saturdays and Sundays when such work was performed by others. The union contends that the grievor was entitled to such work by the provisions of article 4.13 of the collective agreement. That article provides as follows:

> **4.13** Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who would otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

Work on the job in question is performed seven days a week, and there is an employee who performs the job on Saturdays and Sundays as part of his regular assignment, which is made up of this job and others. The job of weighman at the Toronto Hump Yard is done on Saturdays and Sundays as part of an assignment, and it is therefore the case that article 4.13 of the collective agreement has no application in these circumstances.

Article 5.1 of the collective agreement provides that employees are to perform authorized overtime "as locally arranged". There is in effect a local arrangement between the parties relating to the establishment of an overtime board. The work in question was offered in accordance with that arrangement. The grievor had not taken the opportunity afforded him to have his name considered on the overtime board. It is quite true that this would not affect his exercise of any rights under article 4.13. Such rights did not arise in this case, however, because article 4.13 did not arise.

The grievor had requested to be offered overtime work in his own classification and this was done by the company on some occasions. It was suggested that this was a "local arrangement" on which he was entitled to rely. Article 4.13, however, does not contemplate "local arrangements". The only material provision contemplating "local arrangements" is in article 5.1. There does exist a local arrangement of the sort there referred to, and it has been complied with. The company's willingness to grant the grievor's individual request (made on his behalf by the union) appears to have been based on a misunderstanding of the effect of the material provisions of the collective agreement. To continue to comply with this would be to subvert the local arrangement specifically made, and to deny other employees their rights pursuant to that arrangement. On the material before me, l find that the governing arrangement is that relating to the establishment of an overtime board, and that whatever arrangement may have been made with the grievor could not stand in the face of the arrangement respecting the overtime board, unless the latter were expressly revoked.

The company took the position that disputes involving local arrangements could not be submitted to the Canadian Railway Office of Arbitration. I am unable to agree with that contention. It would no doubt be correct with respect to many sorts of informal arrangements, but the collective agreement expressly contemplates "local arrangements", which are defined in article 1.11 as "An agreement between the local supervisory officer of the Company and the Local Chairman of the Brotherhood". Where such an arrangement is made, it must be deemed to be incorporated by reference into the collective agreement. It must be found as a fact that an arrangement does exist (it could not, presumably, be one repugnant to other terms of the collective agreement itself). Grievances may be processed relating to alleged violations of such arrangement, as they are in effect violations of the agreement. Such matters may ultimately be submitted to the Canadian Railway Office of Arbitration for determination. It may be added that the existence of any local arrangement is to be determined having regard to the requirements of the collective agreement, and not to any unilaterally issued directive as to the authority of signing officers.

In the instant case, as I have found the fact that the company allowed the grievor certain overtime work in his classification did not constitute a "local arrangement" of the sort referred to in article 5.1. The real local arrangement in that regard has subsequently been respected, at least as far as this case is concerned. Article 4.13 of the collective agreement does not apply.

For all of the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR