CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 291

Heard at Montreal, Tuesday, June 8th, 1971

Concerning

CANADIAN PACIFIC EXPRESS COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of employee J. Morris, Preston, Ontario, for two hours overtime pay at the rate of double time account Sunday work given to junior employee G. Quinn.

JOINT STATEMENT OF ISSUE:

Article 13, Overtime Clause (j) of the Agreement reads as follows:

> 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 will otherwise not have 40 hours of work that week, in all other cases by the regular employee.

Both J. Morris and G. Quinn hold positions as Warehousemen.

The nature of the work required by the Company to be performed on a Sunday was such as is performed by both employees on their regular assignments.

The Brotherhood contend employee J. Morris, being senior, should have been requested to perform the work.

At issue is whether or not, where there is more than one employee that could be considered the "regular employee", the Company must in all cases offer such work to such "regular employees" in seniority order.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	**(SGD.) J. T. HARFORD**
GENERAL CHAIRMAN	**DIRECTOR, PERSONNEL**

There appeared on behalf of the Company:

F. E. Adlam	– Industrial Relations Representative, Toronto
J. T. Harford	– Director Personnel, Toronto
J. G. MacMillan	– Supervisor Personnel, Toronto
R. J. Daniels	– Regional Manager, Toronto
H. R. Pierce	– Terminal Operations Manager, Toronto

And on behalf of the Brotherhood:

L. M. Peterson	– General Chairman, Toronto
G. Moore	– Vice General Chairman, Toronto
F. C. Sowery	– Vice General Chairman, Montreal
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal
J. F. Danhower	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

In **Case No. 252** it was said that in assigning work to one of the "regular employees" under Article 13(j), the company may not properly act in a manner inconsistent with the provisions of the collective agreement, and that it would be a violation of the collective agreement for it to discriminate unfairly as between qualified employees in making assignments under that article. In the absence of any other consideration, seniority would be the appropriate criterion to be relied on. To say that in all cases the company must offer such work to the "regular employees" in the order of their seniority is to go further than this, and, in effect, to add a new provision to the collective agreement. That is, of course, something which an arbitrator has no jurisdiction to do.

In the instant case the company has not disputed the proposition that Mr. Morris, the senior employee, ought properly to have been called in for the overtime work in question. The loss of an overtime opportunity is not necessarily the same thing as the loss of work on a regular day, and in the instant case the company was able to redress the balance as between employees by calling Mr. Morris for overtime work a few weeks after the occasions complained of. As the result, it cannot be said that there has been any unfair discrimination against Mr. Morris, and the grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR