CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 322

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that work performed by a non-scheduled Timekeeper should have been performed by a Time Clerk at Montreal Wharf.

JOINT STATEMENT OF ISSUE:

On Saturday, January 16, 1971, a rest day for the Time Clerks at Montreal Wharf, the Timekeeper who is excluded from agreement coverage reported for work and during the course of the day drafted staff alteration forms for the freight handling staff and left the drafted forms for the Time Clerks to type. The Brotherhood contends that the work performed by the Timekeeper should have been performed by a Time Clerk, who was covered by the collective agreement, and submitted claim for eight hours' pay at the punitive rate for Time Clerk G. Dieni. The Company declined the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	**(SGD.) K. L. CRUMP**
NATIONAL VICE-PRESIDENT	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company.

D. O. McGrath	– System Labour Relations Officer, Montreal
D. Andrew	– System Labour Relations Officer, Montreal
G. A. Carra	– Regional Labour Relations Officer, Montreal
J. Viscardi	– Timekeeper, Montreal
L. V. Collard	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. A. Callaghan	– Representative, Montreal
P. E. Jutras	– Regional Vice President, Montreal
G. Thivierge	– Local Chairman, Montreal
H. Laviolette	– Local President, Montreal
G. Dieni	– Grievor

AWARD OF THE ARBITRATOR

There is a difference between the parties as to the extent of the work done, but it is agreed that, on the day in question, an employee, not coming within the bargaining unit, performed certain work coming within the scope of the classification of Time Clerk, that is, certain "bargaining unit" work.

By article 2.1 of the collective agreement the union is recognized as the sole collective bargaining agent for the employees coming within the classifications listed in article 10, subject to certain exceptions. The work in question here is of a sort normally performed by an employee coming within article 10.2. In this sense, the work was "bargaining unit" work.

The collective agreement does not contain any provisions prohibiting supervisors or other non-bargaining unit employees from performing "bargaining unit" work. The provisions on which the union relies simply describe the unit of employees for whom the union is entitled to bargain, and who are covered by the collective agreement. These provisions do not have the effect of prohibiting the company from having the work of such persons performed by others. Of course, where an individual regularly and substantially performs the functions of a particular job classification, then it is not unreasonable to conclude that such is, as a matter of fact, his classification. For an example of case where such a conclusion was reached, see the **Fittings Ltd**. case, 20 LAC 249. Here, however, it is not suggested that the persons who performed the work in question were bargaining unit employees; the complaint is rather that, being supervisors, they ought not to have performed work coming within the scope of a classification covered by the agreement. As I have indicated, this does not constitute a violation of any provision of the agreement. The matter has been decided in a number of cases, of which reference may be made particularly to **Cases No. 243** and **216**.

It was argued that what was done was contrary to a letter issued on June 11, 1967, by the president of the company. That letter does not form a part of the collective agreement, and compliance with its contents is not a matter within my jurisdiction. It may be said, however, that the letter contained assurances that the "main functions" of supervisors would not be to perform work by those in the bargaining unit, and that supervisory positions would not be established where work is not clearly supervisory in content. Here, as mentioned above, it is not contended that the supervisors in question were not "really" supervisors. It is claimed rather that these supervisors ought not to perform bargaining unit work. It has not, however, been shown that they did so to the extent that this was their "main function".

As has been said in a number of cases, if the parties had meant to include such an important provision as a prohibition against the performance of "bargaining unit" work by supervisors, they would have done so in clear terms. Article 10.2 contains a list of classification coming within the bargaining unit, it does not contain restriction relating to the assignment of work.

There has been no violation of the collective agreement and accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR