CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 324

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

Claim for overtime work at St. Luc Yard Office by the following employees:

Mr. L. Theoret	February 22 & 28, 1971
Mr. J. P. Fortin	March 9, 1971
Mr. R. Vezina	March 10 & 11, 1971
Mr. R. Simard	March 12, 1971

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Company violated Rule 20 of the Collective Agreement on the dates shown in the Dispute when it allowed Office Supervisors at St. Luc Yard Office to perform Train Machine Clerk duties on these dates.

The Company contends there was no such violation.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. L. GUERTIN
REGIONAL MANAGER, OPERATIONS & MAINTENANCE ATLANTIC REGION

There appeared on behalf of the Company:

C. Moore	– Supervisor Labour Relations, Montreal
R. O'Meara	– Labour Relations Assistant, Montreal
C. Beausoleil	– Labour Relations Assistant, Montreal
J. V. Rivest	– Assistant Superintendent, Montreal

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
R. Simard	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

Rule 20 of the collective agreement, relied on by the union, is as follows:

> **RULE 20** 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.

The rule appears together with a number of other rules grouped under the heading "Assigned Rest Days and Statutory Holidays". Similar, or identical provisions have been considered in a number of cases, in which it has been pointed out that this language does not amount to a prohibition against the performance of work by persons other than members of the bargaining unit. Some of these cases have involved claims that work was improperly sub-contracted, others that it was improperly performed by members of supervision or others not coming within the bargaining unit.

In the instant case, because of disruption caused by severe snowstorms, extra supervision was required on certain days. While the actual amount of "bargaining unit" work performed cannot be precisely determined on the material before me, there is no doubt that members of the supervisory staff did perform some "bargaining-unit" work. While the situation had some of the characteristics of an "emergency", the propriety of what was done does not, as it does under some collective agreements, turn on any finding about that, since the agreement does not prohibit the performance of such work by supervisors.

For the reasons indicated, and as set out in **Cases 118, 151, 177** and **243**, it must be concluded that there has been no violation of the collective agreement, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR