CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 370

Heard at Montreal, Tuesday, July 11th, 1972

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Claim of employee R. Brabant, London, Ontario, for five hours overtime pay at the rate of time and one-half account highway assignment given to junior employee E. Woodburn.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Company violated the provisions of Article 13(j) of the Agreement.

The Company contends that Article 13(J) has no application in this instance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) F. E. ADLAM
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company:

F. E. Adlam – Director, Labour Relations & Personnel, 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

AWARD OF THE ARBITRATOR

The grievor, who had worked his regular shift on the day in question and gone home, alleges that he ought to have been offered on an overtime basis certain work which needed to be performed that evening, the regular employee having become sick. The work in question was a return tractor-trailer trip from London to Chatham. It was first offered by the Company to the senior employee in the classification, who was then at work, but he declined it. The grievor claims that the work should then have been offered to him as next in line in the classification. In fact, the work was offered to another employee junior to the grievor, who, while qualified, was not in the same classification.

It is alleged that this was in violation of Article 13(j) of the collective agreement. That article provides as follows:

> **13 (j)** 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.

It is not suggested that there was available any extra or unassigned employee who would not otherwise have 40 hours of work in the week in question. If, then, this was work "to be performed on a day which is not part of any assignment", then it was to be performed by "the regular employee". Assuming, without deciding that the grievor, by virtue of his classification, could be considered "the regular employee", then, since the man senior to him had turned the work down, and since no other claim by any "regular employee" appears, he would be entitled to the assignment, provided also that the work in question was work required to be performed "on a day which is not part of a assignment". Of course, the Company could have offered the grievor the work, and it appears that the supervisor simply forgot about him when filling the sudden vacancy. No other employee, it seems, would have had any claim had that been done. But the issue is whether, under the provisions of the collective agreement, the Company was under any obligation to contact the grievor and offer him the work. For the reasons set out in **Case No. 252** this is not a case to which Article 7.1 applies: this is not a case of promotion or assignment as those terms are there used, but of a particular overtime opportunity.

In **Case No. 252**, what was involved was overtime work in a particular classification, the work was not part of any assignment, and Article 13(j) applied. It was held that, in the absence of other criteria, seniority should be considered in making the assignment, as between regular employees. But in the instant case, it is not a matter of work "to be performed on a day which is not part of any assignment". The work formed part of a regular assignment, but the regular employee could not perform it by reason of illness. It was not necessarily a situation which required the assignment of an employee on an overtime basis. A qualified employee could have been assigned to the job in lieu of his regular work. As it was, it was performed by a qualified employee on an overtime basis, but that simply relates to the situation of the employee who performed the work; the work itself did not have any particular "overtime" character. In any event, in offering the work to an employee then on duty, the Company cannot be said to have discriminated unfairly against the grievor, this was one of the situations dealt with in **Case No. 292**.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR