

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 739

Heard at Montreal, Tuesday, January 8, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (EXPRESS DIVISION)

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Claims submitted by Mr. C. McGregor, Accounts Receivable Clerk, for overtime worked by junior employees on March 27, April 2, 3, 4, 5, 6, 9 and 10, 1979.

JOINT STATEMENT OF ISSUE:

On various dates between March 27 and April 10, 1979, overtime was required in the billing section of the Express Terminal office in Winnipeg. The senior qualified available employees in the Express Terminal office were called to perform the overtime. Mr. E. McGregor, an Accounts Receivable Clerk, in the Regional Accounting Staff claims that he should have been called for the overtime in accordance with the "1966 Local Overtime Agreement". The Company declined the claim on the ground that the employees in the Regional Accounting group are not covered by the said "1966 Local Overtime Agreement".

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER

NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra	– Assistant Director, Employee Relations, Montreal
W. J. Nazarewich	– Manager, Express Operations, Winnipeg
S. Duke	– Manager, Employee Relations, Winnipeg

And on behalf of the Brotherhood:

W. H. Matthew	– Regional Vice President, Winnipeg
R. McGregor	– Local Chairman, Winnipeg.

AWARD OF THE ARBITRATOR

The grievor is an Accounts Receivable Clerk, working in the Regional Accounts Receivable office at Winnipeg. That office is located in the Company's Express Terminal Building Complex on Plessis Road. It is managed by the Supervisor, Accounts Receivable, who reports to the Regional Accountant who, in turn, reports to the Regional Manager, Western Region, of the Express Division.

The overtime work in question was required in the billing section of the Express Terminal Office in Winnipeg. No question arises as to the grievor's ability to perform the work. The question is rather whether or not he comes within the group of employees entitled to be considered for it, and more particularly whether or not he is within the group of employees covered by the local arrangement set out in a letter dated February 16, 1966, and related correspondence.

That such an arrangement exists was determined in **Case No. 626**. The Company acknowledges the arrangement, but takes the position that it applies to employees working under the jurisdiction of the Manager of the Express Centre at Winnipeg, and that the grievor is not within its scope. The Union of course contends that the grievor does come within the scope of the arrangement.

The dispute in **Case No. 626** was as to the existence of an "Overtime arrangement for Express Centre in Winnipeg, Manitoba". It was held that such arrangement existed. There was no question then before the arbitrator as to the interpretation or application of the arrangement, although it seems clear from the award that it covered clerical and other staff under the jurisdiction of the General Agent and the Terminal Agent at Winnipeg, and of certain supervisory staff reporting to them. The arrangement certainly seems to have included certain employees performing accounting functions. Indeed, the Company does not deny that even today, the arrangement covers some employees who perform accounting functions; its contention is, however, that the grievor is not within that group, as he performs accounting functions in different organizational circumstances.

In 1968, certain accounting functions of the Express Department were transferred to the Area Comptroller. That would appear to have taken the employees concerned out of the scope of the local overtime arrangement which is in question here. Then, in 1970, the Area Comptroller's office was (along with other operations), transferred to the Regional Comptroller's office. There was, thus, a gradual centralization of the functions involved.

In June, 1977, certain positions were transferred from the Regional Comptroller's Office, Winnipeg, to the Express Department, Symington. The Union concludes from this that "this function has been moved a complete circle until 1977, when it is back again with the Express Department".

It may be added that since the local arrangement was made in 1966 the Company's operations have undergone an extensive reorganization. Express operations now constitute a distinct division, with Regional Managers reporting to the President of the Division. In each region, there is a Regional Accountant, and several District Managers, reporting to the Regional Manager. There is no longer a General Agent at Winnipeg, his functions now being incorporated in the position of District Manager at Winnipeg. In fact, there is at present no District Manager at Winnipeg, the functions being performed by the Manager of the Express Centre. The Manager of the Express Centre is the equivalent, then of the old General Agent, and employees under his jurisdiction are covered by the 1966 local arrangement respecting overtime, as we have seen. Employees under the jurisdiction of the Regional Accountant, however, are not covered by that local arrangement, any more than were employees under the jurisdiction of the Area Comptroller or of the Regional Comptroller under the organization in effect at the time the local arrangement was made, in 1966.

It may be that there are certain clerical employees under the jurisdiction of the Manager of the Express Centre at Winnipeg whose jobs have "come full circle" and who, having worked elsewhere for a time are once again (or whose functions are once again) within the scope of the 1966 local arrangement respecting overtime. To that extent the Union's position would be correct. The grievor, however, simply does not come within that group. His function relates to regional accounts receivable and he reports, as has been noted, to the Supervisor of Accounts Receivable, who in turn reports to the Regional Accountant. His work is performed, as it happens, in same building as that of certain employees of the Express Centre, but it could as well be performed elsewhere, and his position in the organization is quite distinct from that of employees reporting to the Manager of the Express Centre or even (if there were one) to the District Manager.

It appears that the Manager of the Express Centre responded to the grievance in this case. That does not constitute an admission that the grievor came within his organizational jurisdiction. It was simply a response to a claim by the grievor that he was entitled to certain work. Again, the fact that the Manager of the Express Centre arranged for a meeting to discuss "the Overtime Agreement" and that he arranged for the Regional Accountant to attend, does not constitute any sort of admission in that regard, or any sort of acknowledgment that the agreement had somehow become broader In scope than it in fact was.

For the foregoing reasons, it is my conclusion that employees (such as the grievor) in the Regional Accounts Receivable Office are not covered by the 1966 local arrangement respecting overtime at the Express Centre in Winnipeg. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR