

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 923

Heard at Montreal, Wednesday, March 10, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

EX PARTE

DISPUTE:

Claim by employee A. Gasperetti, Hamilton, Ontario, for twenty-four hours pay at the applicable overtime rate for work performed by management personnel on August 6th, 7th and 10th, 1981, for which he was available and qualified.

BROTHERHOOD STATEMENT OF ISSUE:

The Brotherhood contends this work should have been allocated on an overtime basis to scheduled employees, and not performed by management personnel.

The Company does not agree and denied the claim.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE

GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT NO. 517

There appeared on behalf of the Company:

D. R. Smith	– Director, Industrial Relations, Administration & Personnel, Toronto
B. D. Neill	– Manager Labour Relations, Toronto
J. E. Lymburner	– Area Terminal Manager, Hamilton
R. A. Colquhoun	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Don Mills
F. W. McNeely	– General Secretary-Treasurer, Toronto

AWARD OF THE ARBITRATOR

The Union's case is not based on any provision of the Collective Agreement, but rather on a letter dated September 3, 1976, from the Vice-President of the Company to the General Chairman of the Union. That letter related to grievances to the effect that non-schedule employees were performing, on a regular basis, duties normally assigned to members of the bargaining unit. It confirmed the Company's policy that management did not condone such practice.

Assuming for the purposes of this case that such a policy has the effect of a provision of a Collective Agreement, and is binding in like manner, the material before me does not set out any violation thereof. While it may be that the Area Terminal Manager does, at times, perform some tasks which might also be performed by members of the bargaining unit, it certainly does not appear that he does so to

the extent that he should himself come within the unit, nor even to the extent that work available to bargaining unit members is substantially affected. Indeed, there is no substantial proof that the Area Terminal Manager performs "bargaining unit" work to any significant extent. In some cases, as in the processing of claims, there is a certain overlap between those duties properly left to members of the bargaining unit and those which might in any event be left to a member of management. There is no evidence to suggest that there has been any sort of managerial "abuse" in such cases. In other instances, as in the occasional answering of the telephone, it has not been shown that that has somehow deprived the bargaining unit of work, or that it has gone beyond the normal and reasonable routine of the small office.

There has, on the material before me, been no violation of the Collective Agreement or of the letter of September 3, 1976, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR