CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 932

Heard at Montreal, Tuesday, April 13, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that Assistant Track Maintenance Foreman E.D. Cronkite should have been assigned instead of Track Maintenance Foreman G.W. Booker to operate the crew-cab truck assigned to Section 23, Woodstock, N.B., on March 3, 4, 5, 6 and 7, 1981.

JOINT STATEMENT OF ISSUE:

On March 3, 4, 5, 6 and 7, 1981, Track Maintenance Foreman G.W. Booker, Section 23, Woodstock, N.B., operated the crew-cab vehicle assigned to that Section to travel to and from Section 24, Hartland, N.B.

The Union contends that Assistant Track Maintenance Foreman E.D. Cronkite is the regularly assigned Operator and should have been assigned to operate the crew-cab vehicle at those times.

The Union further contends that Mr. Cronkite should be paid 22 hours at overtime rates of pay for the time involved; March 3 (2 hours), March 4 (3 hours), March 5 (3 hours), March 6 (3 hours) and March 7 (11 hours).

The Company denies the Union's contentions.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) J. B. CHABOT
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

I. J. Waddell	– Labour Relations Officer, Montreal
B. A. Demers	– Supervisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
L. DiMassimo	– General Chairman, Montreal
F. L. Stoppler	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

If the grievor's claim is to succeed, it must be shown that he was entitled to be assigned to the work in question, to the exclusion of, or in preference to the employee who was assigned to it.

The work in question was overtime work. Article 8 of the Collective Agreement deals with "overtime and calls", but does not deal with the matter of distribution of overtime, and is not relevant to the issue in this case.

The only provision of the Collective Agreement to which I was referred was Article 7.1, which appears to be the only article bearing on the matter. It was argued by the Company that the article should not be referred to, as it is not mentioned in the Joint Statement of Issue. A distinction must be made, however, between the issue, with respect to which the parties are bound by the Joint Statement, and the arguments which may be advanced in respect of each party's position on that issue. It is not necessary that the provisions of the Collective Agreement which may be relied on in argument be set out in the Joint Statement.

Article 7 of the Collective Agreement is as follows:

> **SECTION 7 – WORK ON UNASSIGNED DAYS**
>
> **7.1** Where work is required by the railways to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other cases by the regular employee.

For the purposes of the instant case it may be assumed that the work in question was "not part of any assignment". There is no suggestion of any claim to it by a laid-off or unassigned employee. Thus, it should be assigned to "the regular employee". The work in question was that of directing the operation of a payloader removing ice from a certain section of track. The work was assigned to a Foreman who, in order to carry out his duties, drove the crew cab truck assigned to his section to the area where he was to direct the payloader.

The grievor is an Assistant Foreman. As such, he is required to be able to operate the crew cab truck, and in fact he is the one principally responsible for its operation on his section, although from time to time other qualified employees, including the Foreman, may operate it. The fact that ability to operate truck is a required qualification for an Assistant Foreman does not, however, require the conclusion that operation of the truck is the exclusive right of the Assistant Foreman. If the only work in question were that of operating the truck, then it may be that the grievor would be considered "the regular employee", and he entitled to the work. In this case, however, the operation of the truck was only incidental to the main task, which was that of directing the payloader work. For such work, the Foreman's claim was at least as good as, and probably better than that of the grievor, although it would appear that the grievor was qualified to perform it.

In the circumstances of this case, it has simply not been shown that the grievor was "the regular employee" in respect of the work required to be done. The Collective Agreement gives him no higher claim to the work than that of the person who did it, and certainly no valid claim to perform it exclusively.

There has been no violation of the Collective Agreement, and the grievance must therefore be dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR