CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 980

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of 4 hours at overtime rates for each of five employees on the basis that the local overtime agreement of April 17, 1980 was violated by the Company.

JOINT STATEMENT OF ISSUE:

On 15 September 1981 the Company used an on-track crane crew to unload material from gondola cars. The Brotherhood contends that the use of the on-track crane crew was in violation of the overtime agreement. The Company denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. D. HUNTER	(SGD.) D. C. FRALEIGH
NATIONAL VICE-PRESIDENT	DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

B. Noble	– Manager, Labour Relations, Montreal
J. Gunson	– Manager, Stores, Winnipeg
C. Hamlyn	– Manager, Employee Relations, Montreal
E. Henley	– Employee Relations Assistant, Montreal

And on behalf of the Brotherhood:

Wm. H. Matthew	– Regional Vice President, Winnipeg
H. Falk	– Local Chairman, Winnipeg

AWARD OF THE ARBITRATOR

Article 5.1 of the Collective Agreement provides in part as follows:

5.1 ... employees will perform authorized overtime work as locally arranged in writing.

A local agreement relating to the Winnipeg Terminal, made on April 17, 1980, governs this case. The material provision for the purposes of this case is Article 1(a), which provides that when work of an overtime nature is required, "the regularly assigned employee in that classification" shall perform such overtime.

In the instant case, the Company required that certain gondola cars be unloaded. The work was assigned to an on-track crane crew. In fact, two on-track cranes and their crews (of three men each), worked overtime on that day. One crane and crew unloaded five CN gondola cars of scrap, and loaded one car of scrap into a CN gondola. This overtime work took four hours. There is no complaint with respect to that. The other on-track crane and crew unloaded frogs from two foreign-owned gondola cars, and unloaded wreckage and wrecked trucks. This work too took four hours. It is this latter work which the grievors claim, alleging that it ought to have been assigned to them, being the five crew members of an off track (portable) crane.

The parties differed as to which procedure, use of the on-track or use of the off-track crane was safer or more efficient for the work to be done. The on-track crane uses an electro-magnet and a smaller crew; the off-track crane requires a larger crew, some of whom would be stationed in the gondola cars, for slinging. The determination of equipment and procedures to be used is a managerial function. I do not determine, then, which method would be the safest or more efficient, but rather who was "regularly assigned" to do such work. If by "such work" is meant the operation of the on-track crane, then there is no doubt that the on-track crew, not the grievors, were regularly assigned. If, however, "such work" means the unloading of frogs and of wreckage performed by one of the on-track cranes on the day in question, then there is some conflict in the evidence. The grievors themselves all assert that it was not "normal practice" for such work to be done using an on-track crane. Actual work records, however, reveal that such work has been done by the on-track crane on many occasions over a number of years. Whether or not it is the case that the off-track crane is most often used for unloading frogs, it would appear that the on-track crane is more often used where, as here, there was a mixed "package" of material to be unloaded. There was, in any event, no exclusive right in the off-track crew to perform the sort of work which was involved here. The grievors were not "the regularly assigned employees" within the meaning of the overtime agreement, even though they may often have been assigned such work. The agreement did not require that they be used in these circumstances.

For the foregoing reasons it is my conclusion that there has been no violation of the Collective Agreement. The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR