CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2594

Heard in Montreal, Tuesday, 14 March 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim by the BMWE that the union dues of seven non-bargaining unit employment security employees working as B&B employees at the Barker Street Shop in Moncton, N.B. were wrongfully assigned.

BROTHERHOOD'S STATEMENT OF ISSUE:

Between August 19, 1991 and the beginning of December 1991, seven CN employment security employees from unions other than the BMWE were assigned to perform duties that fell within the scope of Supplemental Agreement 10.9 entered into between the BMWE and the Company. While performing these duties, the seven employees involved were under the supervision of, and took their instructions from, the B&B foreman. The union dues of these employees were submitted, not to the BMWE, but to the unions with which they had established employment security.

The Union contends that: **(1.)** The type of work performed by these employees has traditionally been performed by members of the BMWE. **(2.)** The employees performing the work were under the supervision of BMWE employees. **(3.)** The Company is in contravention of article 38 and Appendix VIII of agreement 10.1, article 7 of the ESIMP, and any other applicable provision of the collective agreement or ESIMP.

The Union requests that: It be reimbursed for all union dues deducted from the employment security employees in question while they performed agreement 10.9 work.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. C. McDonnell	– Counsel, Toronto
M. Hughes	– System Labour Relations Officer, Montreal
W. Agnew	– Regional Manager, Labour Relations, Moncton
I. Steeves	– District Manager, Moncton

And on behalf of the Brotherhood:

D. Brown	– Senior Counsel, Ottawa
R. A. Bowden	– System Federation General Chairman, Ottawa
G. Schneider	– System Federation General Chairman, Winnipeg
P. Davidson	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

The principles governing the instant grievance were examined in two previous arbitration awards, **SHP-318** and **SHP-333**. In **SHP-333** it was found that machinists temporarily assigned to track removal gangs remained under the scope of their own collective agreement as regards wages and benefits, and that they remained within the machinists' bargaining unit (IAM) for the purposes of dues deductions. Similarly, in **SHP-318** employees who were members of the Brotherhood of Boiler Makers (IBB&B) who were on employment security were utilized to perform work normally done by members of the BMWE. In that case the Arbitrator found that the IBB&B remained entitled to receive union dues for the employees in question.

I am satisfied that the case at hand does not involve, as the Brotherhood suggests, the wholesale parachuting of persons on employment security into work normally performed on a permanent, assigned basis by employees who are members of the Brotherhood. Whatever result might obtain in that circumstance, the case at hand, like the two cases referred to above, involves temporary work of a limited duration. Significantly, the Brotherhood does not dispute that the employees in question remained under the terms of the collective agreement of their own union, and did not fall under the BMWE collective agreement. The Brotherhood was under no obligation to represent them for collective bargaining purposes, as for example progressing grievances on their behalf, or ensuring that they are treated in accordance with the provisions of the BMWE collective agreement. It accepts that the employees in question continued to be governed by the separate collective agreement of the International Association of Machinists (IAM).

In light of that position, the Arbitrator has difficulty understanding how the Brotherhood can have it both ways. On what basis can it claim dues in respect of employees to whom it purports to owe no obligation or duty of representation? In my view, the fact that the Brotherhood does not assert that the employees in question came under the terms of its collective agreement is, of itself, conclusive as to the entitlement of the Brotherhood to claim dues in respect of those persons. As noted above, the Arbitrator stresses that this is not a case pleaded on the basis that the Company violated the work jurisdiction of the Brotherhood, or where the Brotherhood seeks a remedy in that regard.

For the foregoing reasons the grievance must be dismissed.

17 March 1995

(signed) MICHEL G. PICHER
ARBITRATOR