CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 263

Heard at Montreal, Tuesday, February 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim of Checker Operator A. Bouchard and Truckers J. Brogan, L. Harvey, E. Valois and M. Bouchard for two hours pay at the pro rata rate.

JOINT STATEMENT OF ISSUE:

As a result of an I.L.A. work stoppage on April 30, 1970, the claimants in this dispute were released from duty while employees junior to them in seniority were retained in service.

The Union contends that Article 6.6 of Agreement 6.3 was violated as a result of this action. The Company contends that this matter falls within the provisions of Article 3.8 of the Agreement, as revised October 2, 1969 and have declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W. T. SWAIN	(SGD.) K. L. CRUMP
GENERAL CHAIRMAN	ASSISTANT VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– System Labour Relations Officer, Montreal
L. V. Collard	– System Labour Relations Officer, Montreal
J. Carra	– Regional Labour Relations Officer, Montreal
J. Whalen	– Wharf Traffic Manager, Montreal Wharf, Montreal
G. Tremblay	– Shed Foreman, Montreal Wharf, Montreal

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
D. Herbatuk	– Vice General Chairman, Montreal
P. Pauzé	– Local Chairman, Montreal
R. Coté	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievors are employed by the company in its Montreal Wharf operation. They handle freight from the various sheds along the waterfront to and from railway freight cars. These operations are carried out at a number of locations along a waterfront territory of approximately twelve miles. Work requirements vary from day to day, and employees are called and assigned to work in seniority order each day in each job classification through a system of "calls" in the morning, afternoon and evening according to requirements. By article 3.5 of the collective agreement, employees ordered to work during day hours are to receive a minimum of four hours' pay. Normally, the grievors would be entitled to the benefit of that provision. Article 3.8 of the agreement provides, however, for an exception in certain cases:

> **3.8** Notwithstanding any minimums provided for in this Article, employees ordered to work and prevented from working for reasons beyond the control of the Company such as an Act of God or work stoppage by employees not covered by this Agreement, will be paid for a minimum of two hours at the prevailing rate.

On the day in question, the grievors were assigned on the 1300 hour "call" to work at shed 51, Bickerdike Pier. They began work, but at approximately 1330 hours the longshoremen, who were employees of others and not covered by the collective agreement, walked off their jobs. Similar walkouts occurred elsewhere on the waterfront, but in most cases the dispute was resolved and the longshoremen returned to work. They did not return, however, at Shed 51. Because of this, the grievors were unable to work, and they were released from duty some time prior to 1400 hours. They were paid for two hours, under the provisions of Article 3.8. At other locations, however, the company's employees were able to work, and were entitled to a minimum of four hours' pay. In some cases, these employees were junior to the grievors.

The union relies on article 6.6 of the collective agreement. That article is as follows.

> **6.6** In reducing forces, seniority shall govern. When forces are increased, employees shall be returned to the service and positions formerly occupied in order of their seniority. Employees desiring to avail themselves of this clause must file their names and addresses with the proper officer.

It is the union's contention that forces were reduced, and that accordingly the grievors were entitled to be retained at work by reason of their seniority. In my view, this is not a correct reading of the provisions of the collective agreement. The forces required by the company that day had been established and assigned for the particular "call" in question. These requirements were not reduced, nor was there any reduction in the number of employees assigned to meet them. The grievors were a part of the assigned forces, and they were entitled to a minimum payment in respect of that "call" They were not laid off, but were assigned to work and then prevented from working. They were entitled to a minimum payment, and the provisions of the collective agreement are quite explicit as to what that minimum should be in the circumstances of this case. There was a work stoppage by employees not covered by the agreement; that is precisely what the collective agreement contemplates, and it is specifically provided that in such a case employees are to be paid for a minimum of two hours. That is what was done.

For the foregoing reasons, it must be concluded that there was no violation of the collective agreement. The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR