CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1845

Heard at Montreal, Wednesday, 9 November 1988

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

December 9 and 10, 1986, Company used Track Maintenance Foreman Mr. A. Masse and Track Maintainer Mr. P. Sauro as Machine Operators to operate Front End Loaders at Angus Shop. The Union claims Machine Operator Mr. J. Fellemans should have been called.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.** The Company called Mr. Fellemans at 17:30 on December 9, 1986 to report for work December 10, at 06:30. **2.** Mr. Fellemans should have been called to work December 9, 1986 from 06:30 to 14:30 and from 23:00 December 9, 1986 to 06:30 December 10, 1986. **3.** The Company violated Section 15.7 of Wage Agreement No. 41 and Sections 2.3 and 2.4 of the Machine Operators Memorandum by not calling Mr. Fellemans when the work started December 9, 1986 at 06:30 **4.** Mr. Fellemans be paid 8 hours at the regular Group No. 1 rate of pay from 06:30 to 14:30 for December 9, 1986 and 7 at the overtime rate for the period from 23:00 December 9, 1986 to 06:30 December 10, 1986.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) L. M. DIMASSIMO	(SGD.) A. Y. DEMONTIGNY
FOR: SYSTEM FEDERATION GENERAL CHAIRMAN	FOR: CHIEF MECHANICAL ENGINEER

There appeared on behalf of the Company:

A. Y. DeMontigny	– Supervisor, Personnell & Labour Relations Montreal
L. G. Winslow	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

L. DiMassimo	– Federation General Chairman, Ottawa
R. Della Serra	– General Chairman, Montreal
R. Achmin	– Local Chairman, Montreal
G. Fellemans	– Grievor

AWARD OF THE ARBITRATOR

This grievance turns of the application of Section 15.7 of the Collective Agreement which reads in part as follows:

> **15.7** Except as provided in Clause 15.8, when staff is increased or when vacancies of forty-five days or more occur, laid-off employees shall be recalled to service in seniority order in their respective classifications. ...

It does not appear disputed that although the grievor held seniority as a Machine Operator, he was laid off from that classification and was employed as a Gatekeeper in Montreal and paid at the rate of a Leading Track Maintainer. It is common ground that with the advent of the winter season, in accordance with Article 15.7, Machine Operators are called to service based on their order of seniority in that classification. In keeping with that obligation the grievor was notified by a Company timekeeper that he was scheduled to commence work as a Machine Operator on snow removal on December 10 at 06:30. In fact the snow storm, which was the reason for the Company's decision to call the grievor into work, struck several hours sooner than expected and Track Maintenance Foreman Masse and Track Maintainer Sauro were utilized to operate front-end loaders at the Angus Shop through the night of December 9 to December 10. It is that work which the Union claims the grievor should have been called to do.

The Arbitrator has some difficulty with the Union's position. It is within management's rights to schedule employees. While it appears that as a matter of general practice Machine Operators assigned to snow removal are called in for the first storm of the season and continue to work on a relatively regular basis thereafter, there would appear to be nothing unreasonable or inconsistent with the Collective Agreement in the decision of the Company in the instant case to recall the grievor to work as a Machine Operator effective 06:30 on December 10, 1986. After it made that arrangement, the Company was surprised by the storm, which came a few hours in advance of expectation. I do not see how, in these circumstances, the period of overnight work which then became necessary to be performed can be fairly be said to fall within the contemplation of the words "when staff is increased or when vacancies of forty-five days or more occur ..." in Section 15.7 of the Collective Agreement. In the Arbitrator's view what occurred was the unforeseen development of a temporary, short-term vacancy which the Company found itself obligated to fill.

For these reasons the material before the Arbitrator does not disclose a violation of Section 15.7 of the Collective Agreement and the grievance must therefore be dismissed.

November 10, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR