

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 31

Heard at Montreal, Monday, March 21st, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Concerns the manner yard assignments were advertised at change of time table effective 12:01 a.m., October 31st, 1965, in the Montreal Terminals and instructions issued subsequent thereto which compelled the employees to date their wage claims improperly in order to coincide with the Company's interpretation of the rules and instructions. This also concerns the manner in which the employees' claims were handled by the Company and in their opinion is in violation of the provisions contained in Clauses (a) and (b) of Rule 23 and Rule 3, Clause (c) of the Yardmen's Agreement.

There appeared on behalf of the Company:

F. G. Firmin – Supervisor, Personnel & Labour Relations, Montreal.
R. S. Allison – Superintendent, Montreal Terminals Division, Montreal

And on behalf of the Brotherhood:

J. I. Harris – General Chairman, Montreal
H. L. O'Neill – General Secretary, Montreal

AWARD OF THE ARBITRATOR

In this matter the Brotherhood was granted permission to submit this claim without a joint statement of issue being prepared.

The problem arises from the manner in which yard assignments have been advertised in the Montreal Terminal from September, 1965, allegedly in violation of Rule 3, Clause (c) and Rule 23 Clauses (a) and (b) of the Yardmen's Agreement.

Rule 3, Clause (c) reads:

Where three eight hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:30 a.m. and 8:00 a.m.; the second, 2:30 p.m. and 4:00 p.m.; and the third, 10:30 and 12 midnight.

In September, 1965, by mutual agreement, Article 42, Rule 17, Clause(c) of the Atlantic and Eastern Regions' Agreement and Article 17, Clause (d) of the Prairie and Pacific Regions' Agreement were amended to provide for an additional holiday. No change, however, was made in this provision:

Shifts commencing between 12:00 midnight and 11:59 p.m., both inclusive, on the general holidays specified in Section 1 of this Agreement shall be considered as work on that holiday.

Before the bulletined change on September 28, 1965, the third starting time for these continuous shifts had been 11:59 p.m.

Mr. Harris placed particular emphasis on the word "between" appearing in this Rule. Undefined in the agreement he suggested its ordinary meaning of "intervening time" should be applied. In other words, starting time for the third shift should commence any time after 10:30 p.m. but no later than 11:59 p.m.

Before the last change of timetable on October 31, 1965, these shifts had been shown with a starting time of 11:59, although the shifts actually started at 12:00 midnight and the men worked through until the start of the next shift at 8:00 a.m.

Mr. Firmin stated that when the change was made, there was a change made in the men's days off to coincide. The change agreed to by the Brotherhood as to holiday pay, whereby the third shift commences at midnight excludes any possibility of holiday pay being concerned in this dispute. Mr. Firmin could not understand, therefore, how there could be any claim of unfairness to the men involved. The forty-hour week was provided for. The man worked five eight hour days. If they worked more than that, overtime became available. The minute involved made no difference to them during their regular work week. Further, there was nothing in Rule 3 as to starting time that specifically excluded midnight from the time when a shift could commence.

The question therefore is whether the expression "10:30 to midnight" was intended to exclude the one minute between 11:59 and 12.00 o'clock midnight as a time when a shift can commence.

A careful study of the term convinces me there is nothing in it to permit such a conclusion. It was established that the first shift although provided to commence between 6.30 and 8.00 a.m., commences at 8:00 a.m., similarly the second shift, which could commence between 2:30 and 4:00 p.m., commences at 4:00 p.m. Carrying Mr. Harris' argument to the ultimate it would not be possible for a shift to commence at 6:30 a.m.; it would have to commence at 6:31. By the language used I cannot conceive this was the intention of the parties. I believe the word "between" sets a limit of an hour and a half during which each shift must be started, but I do not believe either time mentioned for the first, second or third shift is excluded.

It is a cardinal rule in construing a contract that no interpretation leading to an absurdity must be given. When the plain purpose of this provision, to divide the work day for three continuous shifts into eight-hour periods is considered, as well as the fact that no violation of an employee's general rights has been shown, to exclude the one "minute" complained about would be taking a legalistic view that might well be considered an absurdity.

For these reasons this claim must be denied.

This ruling obviates the necessity to consider other matters raised by Mr. Harris.

Dated at Brampton, Ontario, this 23rd day of March, 1966

(signed) J. A. HANRAHAN
ARBITRATOR