

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 43

Heard at Montreal, Monday, July 11th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Request of Brotherhood that Yardmen who have been denied the right to work their regular assignments as bulletined, be compensated one day's pay for each day the Company denied them the right to work their regular shift and an additional four (4) hours at the straight time rate when worked on one of the assigned rest days.

FOR THE EMPLOYEES:

(SGD.) J. I. HARRIS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

- F. G. Firmin – Assistant to Vice-President, Atlantic Region, Montreal
- R. Colosimo – Supervisor Personnel & Labour Relations, Montreal
- R. S. Allison – Superintendent, Montreal

And on behalf of the Brotherhood:

- J. I. Harris – General Chairman, 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 representative of the Brotherhood stated they accepted the award of the Arbitrator in **Case No. 31** and acknowledge the fact that the Company may commence yard assignments at 12:00 midnight.

The previous dispute dealt with in **Case No. 31** concerned the manner in which yard assignments were advertised at change of time table effective 12:01 A.M. October 31, 1965, in the Montreal Terminals.

In that matter, as in this, Rule 3, Clause (c) was the basis for the Brotherhood's contention. It 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. ; second, 2:30 p.m. and 4:00 p.m.; and the third, 10:30 and 12 midnight.

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

The ruling in **Case No. 31** was that a shift could commence at 12:00 midnight instead of 11:59.

The representative of the Brotherhood claimed that regardless of whether the shift starts at 10.30 p.m. or 12.00 midnight, it must be considered the third shift of the day. It was contended the Company was erroneously interpreting the award in **Case No. 31** as allowing them to begin the first shift on a new date at 12:00 midnight.

Yard assignment No. 27 was used as an example, it reads:

Sunday	12:00 midnight to 8:00 a.m.
Monday	12:00 midnight to 8:00 a.m.
Tuesday	12:00 midnight to 8:00 a.m.
Wednesday	12:00 midnight to 8:00 a.m.
Thursday	12:00 midnight to 8:00 a.m.
Friday	Day off
Saturday	Day off

For the Company it was contended this request of the Brotherhood was dealt with and resolved in the award in **Case No. 31**. In that matter it had been maintained that whether the midnight shift is regarded as the third or first shift of the calendar day, or 24-hour period, was quite irrelevant to the dispute. The assignments, together with days off, were established by bulletin according to the requirements of the collective agreement. Wage claims are dated and paid according to the shifts as they are actually worked from day to day. The employees have not been deprived of work on their regular assignments, as alleged, nor have they been required to work on their assigned rest days. It was claimed the men's days off fall within the same 48-hour period as previously and they have continued to work and receive payment for a regular work week of 5 days, of 8 hours each, or 40 hours, followed by two rest days.

Article 42, Rule 1, Clause (c) provides:

A work week of forty hours is established consisting of five consecutive days of eight hours each, with two days off in each seven, except as hereinafter provided.

Clause (d) reads:

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work.

Clause (e) reads:

All regular or regular relief assignments for yard service employees shall be for five consecutive days per work week of not less than eight consecutive hours per day, except as otherwise provided in this agreement.

The example used, Yard Assignment No. 27, fully complies with what is contained in Clauses (c) (d) and (e). Those who bid for that assignment were not required to work more than eight hours daily for five consecutive days and received two days off.

Of particular importance is the provision in Clause (d) that the "work week" is to commence "on the first day on which the assignment is bulletined to work." This must be read in conjunction with Clause (c) Rule 3. The former sets the work week, the latter the starting time. If the work week commences between 6.30 and 8.00 a.m., the pattern therein set forth would prevail. In the case of Assignment No. 27, however, the work week commenced at 12:00 midnight.

It will perhaps clarify the issue for those making these claims to emphasise that midnight Sunday is the end of that day. One second later commences a new day, Monday. It would be torturing language to find that those bidding on Assignment No. 27 did not perform their duties during the first eight hours of Monday and thus commenced their work week on that first day of their assignment – the regular forty-hour week that forms the basis for their weekly income. Finishing their work week at 8.00 a.m. Friday, they have forty-eight hours freedom until Sunday morning at 8.00 a.m. and a further sixteen hours before they are again required to report for duty.

It is impossible to read into that pattern any violation of the general terms of employment that have been negotiated for the employees concerned.

For these reasons these claims are dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR