CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 68

Heard at Montreal, Monday, May 8th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yardman G.J. Sturn, Vancouver, B. C., for 8 hours at yard helper's pro-rata rate, May 14, 1965.

JOINT STATEMENT OF ISSUE:

On May 14, 1965, Yardman G.J. Sturn was regularly assigned as yard helper to a 2200 to 0600 yard assignment, Vancouver, B.C. After commencing work on his regular assignment that day, he was notified at approximately 2230 that he was required to work as yard foreman on a 2230 to 0630 yard assignment.

For service performed on May 14, 1965, Yardman Sturn submitted a time return claiming eight hours at yard helper's pro-rata rate for the 30 minutes worked on the 2200 to 0600 yard assignment and a further time return claiming eight hours at yard foreman's pro-rata rate for the eight hours worked on the 2230 to 0630 yard assignment. The Company allowed payment of these time claims on the basis of continuous service from 2200 to 0630 at yard foreman's rates; that is, eight hours at pro-rata rate and 30 minutes at punitive rate.

Yardman Sturn subsequently submitted a claim for the difference between the amount originally claimed and the amount paid. Payment of this claim was declined by the Company and the Brotherhood alleges that, in refusing to make payment, the Company violated article 1, clause (b) of the yardmen's agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) H. C. WALSH	(SGD.) E. K. HOUSE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

H. C. Walsh	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The sixth paragraph of article 8, clause (b) of the agreement provides:

> When a foreman's position becomes vacant and is not filled, the senior available foreman, not working as such, starting work at the same time in the particular yard … will be required to fill the vacancy.

On the day in question the claimant, it was contended, was not notified prior to leaving for work of his requirement to protect the foreman's vacancy on the 2200K assignment. He reported for his regular job and commenced work at 2200K; thirty minutes later he completed his work as a helper, on being informed by his supervisor that he was required to commence work as a foreman at 2230K.

The spokesman for the Brotherhood contended this was in violation of article 1, clause (a) of the Schedule of Rates and Rules for Yardmen, reading:

> **1(a)** Eight (8) hours or less shall constitute a days work.

Further, that article 2, clause (a) of the agreement reading as follows, is pertinent:

> **2(a)** Yardmen shall be assigned for a fixed period of time which shall be for the same hours daily for all regular members of a crew. Such hours will be relaxed only to the extent provided in article 1(A) clause (f). So far as it is practicable assignments shall be restricted to eight (8) hours' work.

For the Company it was stated the crew office tried to notify Yardman Sturn at his home that he would be required to fill the yard foreman vacancy. This was not done for some 30 minutes after he reported for duty on his regular assignment. Immediately he was notified, he assumed the yard foreman vacancy.

While the grievor had claimed eight hours' pay at the pro rata yard helper rate of pay and an extra eight hours' work on the yard foreman position, the Company compensated him on the basis of a single tour of duty commencing at 2200 and ending at 0630. Payment was allowed for this period at the yard foreman rate of pay; pro rata rate for the first eight hours, and punitive rate for the remaining 30 minutes.

The Joint Statement of Issue contended the violation claimed was of article 1, clause (b). The Company's spokesman read this article:

> **1(b)** Yardmen (Foremen and Helpers) assigned to regular shifts who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on second tour of duty within 24 hours of the starting time of the preceding shift paid for at pro rata rate, will be paid for time worked in excess of eight hours' continuous service and for the second tour of duty at one and one-half times the pro rata rate.

Analysing this provision the Company spokesman claimed it contained two provisions, one contemplating continuous service in excess of eight consecutive hours; the second dealing with the commencement of a second tour of duty after completing one tour and going off duty. If no break occurred between the periods of duty, payment for all time worked, it was claimed, would fall within the first situation.

It was emphasised with respect to the claimant there was no interruption between leaving the yard helper classification and entering the yard foreman classification; he did not go off duty. There was not one moment of uncompensated time during the change from one classification to the other. It was contended the completion of a shift or tour of duty is a necessary ingredient to the working of the second provision of clause (b).

The Company's representative referred to the Canadian Railway Office of Arbitration **Case No. 6**, involving a dispute between the Canadian Pacific Railway and this Brotherhood, where the latter endeavoured to divide a single tour of duty and to argue that the basic day provision applied a second time during a road trip. In that dispute the Arbitrator concluded that:

> … the foundation for a successful decision in this claim was removed with the deletion of the automatic end of trip rule.

It was submitted that for this claim to succeed the agreement would have to contain something in the nature of an "automatic release" clause. Nothing of that description, of course, appears in this agreement.

A study of article 1, clause (b) reveals nothing that could be applicable to the circumstances described. It is clearly a provision providing for overtime after eight hours continuous service or when an employee is required to commence a second tour of duty within a twenty-four hour period. It would be straining language beyond reason to fit those terms into a change in duties within the one tour of duty, as occurred on this occasion.

I therefore find there was no violation of the claimant's rights under the agreement.

(signed) J. A. HANRAHAN
ARBITRATOR