

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 83

Heard at Montreal, Monday, November 13th, 1967

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF RAILROAD TRAINMEN**

### DISPUTE:

Claim of Yardman J. Fuoco, Revelstoke, for time and one-half of pay for shift worked on his regular yard assignment from 7:00K to 15:00K, Wednesday, December 28th, 1966.

### JOINT STATEMENT OF ISSUE:

Yardman Fuoco worked his regular shift as helper from 7:00K to 15:00K on Tuesday, December 27th and was later called and worked as Foreman on a shift commencing at 23:00K, also on Tuesday, December 27th.

At the completion of his shift as Foreman, he resumed his regular assignment and worked as helper from 7:00K to 15:00K on Wednesday, December 28th.

He was paid at pro rata rates for the shift worked as Foreman commencing at 23:00K, December 27th and claimed time and one-half for his tour of duty commencing at 7:00K, December 28th. Claim for payment at time and one-half was declined by the Company. The Brotherhood of Railroad Trainmen alleges that the Company, in declining this claim, has violated the provisions of Article 2, Clause (b), of the Yard Rules, which reads:

**2(b)** Except as provided in the second paragraph of this clause, yard foreman or helper assigned to regular shifts who is required to work in excess of eight consecutive hours or who is required to commence work on a second tour of duty within twenty-four 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.

Yard helper assigned to regular shifts who is required to commence work on a second tour of duty as foreman within sixteen hours of the starting time of the preceding shift will be paid for the second tour of duty at one and one-half times the pro rata rate.

Spare yardman who is required to work in excess of eight consecutive hours will be paid for time worked in excess of eight hours continuous service at one and one-half times the pro rata rate.

**NOTE:** The foregoing shall not apply when changing off where it is the practice to work alternate days and nights for certain periods, working through two shifts to change off or where exercising seniority rights.

### **FOR THE EMPLOYEES:**

**(SGD.) S. MCDONALD**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) R. S. ALLISON**  
GENERAL MANAGER, PACIFIC REGION

There appeared on behalf of the Company:

J. G. Benedetti – Supervisor Personnel & Labour Relations., Vancouver  
C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien – Vice-General Chairman, Calgary

### AWARD OF THE ARBITRATOR

As indicated, Yardman Fuoco was regularly assigned as Helper on the 7:00K to 15:00K assignment, working Monday through Friday.

After completing his regular shift at 15:00K, December 27, he was called as Foreman for the 23:00K – 7:00K shift for which he claimed and was paid pro-rata rate. Prior to 7:00K on December 28, Yardman Fuoco was said to have advised the Yardmaster he would be manning his regular assignment as Helper from 7:00K to 15:00K, December 28.

The issue, of course, is the refusal of the Company to pay the grievor's claim for time and one-half for working his regular yard assignment of Helper from 7:00K to 15:00K, on December 28th.

The Brotherhood claimed that Yardman Fuoco's claim for time and one-half for his shift worked from 7:00K to 15:00K, December 28 comes within the provisions of the first paragraph of Article 2, Clause (b), as he commenced work on a second tour of duty within 24 hours of the starting time of his preceding shift paid for at pro rata rate.

The pertinent portion of Article 2, Clause (b) is that stating:

**2(b)** Except as provided in the second paragraph of this clause, yard foreman or helper assigned to regular shifts who is required to work in excess of eight consecutive hours or who is required to commence work on a second tour of duty within twenty-four 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. ...

The second paragraph deals with a Yard helper assigned to regular shifts who is required to commence work on a second tour of duty as foreman within sixteen hours of the starting time of the preceding shift. That would have no application to the circumstances in this claim.

For the Company it was claimed the provisions of paragraph 1 of Clause (b) of Article 2 do not apply in respect of a yard foreman or helper assigned to a regular shift who is required to commence work on a second tour of duty in another grade of service within twenty-four hours of the starting time of the preceding shift, paid for at pro-rata rate.

It was stated that in the preamble of the current collective agreement it is specified "The term 'Yardman' shall be understood to include Yard Foreman and Helper."

Pointing to certain provisions in the agreement indicating that when a grade of service is involved, the specific term "Yard Foreman", "Foreman" or "Helper" is used. Because in Article 2, Clause (b), Paragraph 1, specific reference is made to "yard foreman or helper", the general term "yardman" not being used, it was submitted the provisions of this clause relate to a yard foreman or helper required to commence work on a second tour of duty in the same grade of service, within 24 hours of the starting time of the preceding shift worked in the same grade of service and paid for at pro-rata rate.

Further, it was submitted that reference in Article 2, Clause (b), Paragraph 1, to work "in excess of eight consecutive hours" and "time worked in excess of eight hours continuous service" are in respect of a shift or tour of duty continuing beyond the normal eight hours, namely, in the same grade of service. In other words, the provisions do not differentiate between a yard foreman or helper required to work "in excess of eight consecutive hours" and a yard foreman or helper required "to commence work on a second tour of duty within twenty-four hours of the starting time of the preceding shift paid for at pro-rata rate". It followed, it was claimed, that the reference to "in excess of eight consecutive hours" being in respect of the same grade of service that the reference "to commence work on a second tour of duty within twenty-four hours of the starting time of the preceding shift paid for at pro-rata rate" is also in respect of work performed in the same grade of service – not to that performed in another grade of service.

After a careful study of Paragraph 1 of Article 2, Clause (b), with deference, I am unable to read into it what is submitted by the Company.

For solution to this particular problem, the words "in excess of eight consecutive hours" may be ignored. The paragraph provides that "a yard foreman or helper" required "to commence work on a second tour of duty within

twenty-four hours of the starting time of the preceding shift” is to be paid for the second tour of duty at one and one-half times the pro-rata rate.

This grievor was one of the two classifications mentioned in Paragraph 1, namely, a helper, when he commenced a second tour of duty within twenty-four hours of his preceding shift. His preceding shift commenced at 23:00K on December 27. He commenced another tour of duty, his second, “within twenty-four hours of the starting time of that preceding shift.” There is nothing in the wording of the section limiting the application of that provision to those who have served the previous tour of duty in the same classification. There is a qualification with respect to a helper assigned to regular shifts who is required to commence work on a second tour of duty as a foreman within sixteen hours of the starting time of the preceding shift. This is contained in the second paragraph of Article 2, Clause (b). When that occurs the Company is required to pay one and one-half times the pro-rata rate for the second tour of duty as foreman.

The unqualified language used in the first paragraph with respect to commencing work on a second tour of duty within twenty-four hours of the starting time of the preceding shift, indicates an understandable agreement for payment, as a penalty, for the extra effort involved because of not having sixteen hours freedom after a helper or a foreman has completed one eight hour tour of duty.

For these reasons this claim must succeed. The necessary adjustment flowing there from should be made forthwith.

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**