

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 116

Heard at Montreal, Tuesday, September 10th, 1968

Concerning

CANADIAN NATIONAL RAILWAYS

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

EX PARTE

DISPUTE:

Claim by Shop Accounting Clerk M.D. Barrett for call-out compensation on January 24, 1968 and January 25, 1968.

EMPLOYEES' STATEMENT OF ISSUE:

The Company declined payment of the claim. The Brotherhood contends that this is in violation of Article 13.1 of the Collective Agreement, (6.1. between the Company and the Brotherhood).

FOR THE EMPLOYEES:

(Sgd.) E. E. THOMS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. A. McDiarmid – Labour Relations Assistant, Montreal
G. J. James – Assistant Employee Relations Supervisor, St. John's

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater,
E. F. Downard – International President's Special Assistant, Montreal
M. J. Walsh – Local Chairman, Newfoundland

AWARD OF THE ARBITRATOR

The grievor, a shop accounting clerk in the dockyard office at St John claims call-out compensation relating to two occasions on which it is alleged he was entitled to be called to work, but was not called. In the employee's statement of issue, reference is made to Article 13.1 of the Collective Agreement which provides as follows:

13.1 Subject to the provisions of Article 12.5, time worked by employees on regular assignments, continuous with, before or after the regularly assigned hours of duty shall be considered as overtime and shall be paid for on the actual minute basis at one and one-half time's the hourly rate. Every effort will be made to avoid the necessity for overtime; however, when conditions necessitate, employees will perform authorized overtime work as arranged locally.

It is clear, however, that Article 13.1 deals with the matter of continuous overtime. The only provision relating to call-out appears to be Article 13.6:

13.6 Regularly assigned employees notified or called to work not continuous with, before or after the regularly assigned hours, shall be allowed a minimum of two hours at one and one-half times the hourly rate for two hours' work or less, and if held on duty in excess of two hours, will be allowed compensation on the minute basis at one and one-half times the hourly rate. However, employees may, if the conditions justify, be compensated as if on continuous duty. This does not apply to employees who are stopped before leaving home.

No issue was raised as to whether Mr. Barrett was entitled to be called out for the work in question. Certain clerical work was needed to be done in completing the accounts covering repairs to the tanker "Golden Eagle" in the St. John's dockyard. Such work came within Mr. Barrett's classification, and he, along with others, had done work on these accounts. Mr. Barrett left work on January 24, 1968, at 5:15 p.m., his usual quitting time. At approximately 7:00 p.m. the Company found it necessary to call in certain employees to work on the accounts.

On the instructions of his supervisor, Mr. G. Ryall, a clerk in the dockyard office, called in two other employees by telephone. He was unable to contact Mr. Barrett. Later that night, at approximately 7:00 a.m. on January 5, it was again necessary to call in employees to work on the accounts for the "Golden Eagle". The same employees were called, and were picked up by taxi, but no attempt was made to reach the grievor at that time.

The Company did in fact seek to call in Mr. Barrett for the work in question. Whether or not it was under any obligation to do so (either by virtue of local practice or the express provisions of the collective agreement) is not the issue in this case, in which the sole issue was the reasonableness of the Company's attempt to reach the grievor in order to call him in to work.

Mr. Barrett's personal file listed Carbonear, Newfoundland as his home, but did not record any address or telephone number for him in St John's. It was known to the Company that Mr. Barrett lived in a rooming house known as "Lillian's Boarding House" in Brazil Square in St. John's, a short distance from the dockyard office. Neither the number of the house in Brazil Square, nor the telephone number of Lillian's Boarding House, was known. Mr. Ryall, a fellow employee, had once called at the house to deliver a letter to Mr. Barrett but he did not recall the number. The telephone Company could not identify any "Lillian's Boarding House" in Brazil Square. A call was made to the boarding house of one Mrs. Lillian Mercer in Brazil Square but this proved unavailing. I am satisfied that both the supervisor and the grievor's fellow employees made a sincere effort to locate Mr. Barrett at this time, and that these efforts were the only reasonable ones at this time. No purpose would have been served in repeating these futile efforts for the 3:00 a.m. call, and it was hardly to be expected that the employees then being driven to work by taxi, should go knocking on doors in Brazil Square in a search for Mr. Barrett.

Accordingly, it is my conclusion that reasonable efforts to locate the grievor were made, and the Company took reasonable steps to fulfil whatever obligation it had to Mr. Barrett in these circumstances.

Although the foregoing is sufficient for the disposition of this case reference should be made to the Company's allegation that Mr. Barrett had failed to supply his address and telephone number although he had been requested to do so at the beginning of 1968. This allegation was denied by the Union, and there is before me a letter from the grievor to the local chairman of the Union in which the grievor states that he was never requested to leave his number. In these circumstances I am unable to reach any decision as to this fact, and the only conclusion I can reach is that the Company's allegation has not been substantiated. Where the parties are in disagreement as to the facts, no finding can be made on those facts without evidence to substantiate it. I have accordingly not considered this matter in the determination of this case.

For the reasons set out above, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR