

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 163

Heard at Montreal, Tuesday, July 8th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

Claim of Mr. J.A. Luciani for time and one-half rates for work performed on June 24, 1968 plus eight hours account not worked 3:30 p.m. to 11:30 p.m. shift.

JOINT STATEMENT OF ISSUE:

Mr. Luciani's regular assignment was the 3:30 p.m. to 11:30 p.m. shift with Saturday and Sunday off. On Friday, June 21, his supervisor approached him and requested that he work the 7:30 a.m. to 3:30 p.m. shift, instead of his regular shift, on Monday, June 24, 1968.

The Brotherhood claims that the Company violated Articles 1.11, 4.7 and 5.1 of Agreement 5.1 and that the Company should not have changed Mr. Luciani's hours without prior consent of the Local Chairman.

The Brotherhood requests that Mr. Luciani be paid at time and one-half rates for the work performed on the 7:30 a.m. to 3:30 p.m. shift plus eight hours at straight time rates for his regular shift although he did not work his regular shift.

FOR THE EMPLOYEES:

(Sgd.) J. A. PELLETIER
EXECUTIVE VICE PRESIDENT

FOR THE COMPANY:

(Sgd.) K. L. CRUMP
ASSISTANT VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	– Labour Relations Assistant, Montreal
B. Noble	– Senior Agreements Analyst, Montreal
P. Malandro	– Supervisor of Car Control, Montreal
G. A. Carra	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice-President, Montreal
P. E. Jutras	– Regional Vice President, Montreal
G. Gagnon	– Local Chairman, Montreal
J. A. Callaghan	– Representative, Montreal

AWARD OF THE ARBITRATOR

Article 4.7 (a) of the collective agreement provides as follows:

47 (a) The starting time of employees on regular assignments shall be the same on all days of the week unless agreed otherwise locally. Not less than thirty-six (36) hours' notice will be given when changes are required. The Local Chairman shall be notified in writing of such changes. Regular relief assignments will correspond to the starting time, duties and work locations of the employee relieved.

Mr Luciani was assigned to a regular relief job, and contrary to the joint statement of issue his hours were as follows:

Monday	– 1530 to 2330 hours
Tuesday	– 2330 to 0730 hours
Wednesday	– 2330 to 0730 hours
Thursday and Friday	– Rest Days
Saturday	– 0730 to 1530 hours
Sunday	– 0730 to 1530 hours

On Monday, June 24, 1968, Mr. Luciani would, under his regular relief assignment, have worked from 1530 to 2330 hours. This day, being St. Jean Baptiste Day, was a holiday for many employees of the Company, although it was not a holiday under the collective agreement covering employees in this bargaining unit at that time. The operations in the grievor's area were, it seems, somewhat curtailed on that day.

On June 21 Mr. Luciani's Supervisor requested that he work from 0730 to 1530 on Monday, June 24, rather than from 1530 to 2330 as he would otherwise have done. Mr. Luciani agreed to this change. While the requirement of 36 hours' notice, set out in Article 4.7 (a) was met, it was acknowledged by the Company in an answer to the grievance that Article 4.7(a) was violated in that no written notification was given to the Local Chairman. The Company submitted at the hearing that changes in hours of work have been made on six similar occasions since 1967 without protest, and that this constituted a "Local agreement". As to this it must be said first that the Local Chairman had questioned the practice, and second that the phrase "unless agreed otherwise locally", as used in Article 4 7(a), refers only to the general requirement that the starting time of employees on regular assignments shall be the same on all days of the week. In my view written notice to the Local Chairman was required; that requirement has not been waived, and was not met.

While there is no "penalty" set out for violation of Article 4.7 the natural consequence of non-compliance with its provisions must be that the purported changes are ineffective. That is, until the written notification provided for in the collective agreement was given, Mr. Luciani's regular relief schedule remained the same.

Article 5 1 provides that time worked continuous with, before, or after the regularly assigned hours of duty shall be considered as overtime and shall be paid at one and one-half times the hourly rate of pay. Since the purported change in Mr. Luciani's hours of work was ineffective by reason of non-compliance with Article 4.7(a), his hours of work remained from 1530 to 2330 for that day. His work on that day was done entirely before those regularly assigned hours of duty, and the agreement requires that he be paid at time and one-half for it. It may be noted that in an answer to the grievance the Company acknowledged that this was the case, and offered to pay Mr. Luciani at time and one-half for the day in question.

The Union requests, however, that Mr. Luciani be paid as well for the eight regularly scheduled hours which he did not work. This claim is based on Article 5.4 of the agreement which provides that employees will not be required to suspend work during regular hours in order to absorb overtime. The circumstances of the instant case, however, are plainly not among those to which Article 5.4 is directed Mr. Luciani was not "required to suspend work" on his regular shift in order to "absorb" overtime. Rather he agreed to work on a preferable shift on the day in question, as a matter of convenience. I can find no basis for the claim for an additional eight hours' pay at straight time for Mr. Luciani.

It is accordingly my award that Mr. Luciani be paid for the hours worked on June 24, 1968 at the rate of time and one-half.

(signed) J. F. W. WEATHERILL
ARBITRATOR