

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 278

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim of Motorman F. Stillman, Halifax, N.S. that the Company violated Article 5.1 of Agreement 5.1 when a junior employee was used to man an extra highway trip in Express service.

JOINT STATEMENT OF ISSUE:

On September 2, 1970 because of a large volume of traffic at Halifax, it was decided to operate an extra highway trip from Halifax, N.S. to Port Hawkesbury, N.S. Motorman G. W. Mitchell, who was on duty at Halifax at the time, was used to perform this service. The Brotherhood contends that Motorman Stillman, who was the senior man on an overtime list, should have been called for this service and is therefore entitled to nine hours' pay at punitive rates. The Company denied the claim.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. O. McGrath – System Labour Relations Officer, Montreal
R. R. Goodwin – Terminal Traffic Manager, Halifax

And on behalf of the Brotherhood:

L. K. Abbott – Regional Vice President, Moncton

AWARD OF THE ARBITRATOR

Article 5.1 of the collective agreement is as follows:

- 5.1** Subject to the provisions of Article 4.4, 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 at one and one-half times the hourly rate of pay in minimum increments of fifteen (15) minutes. Every effort will be made to avoid the necessity for overtime; however, when conditions necessitate, employees will perform authorized overtime work as locally arranged. An employee filling an established full time position, required to work overtime for more than two hours, continuous with completion of that employee's regular tour of eight hours' duty will be allowed without deduction of pay, twenty minutes in which to eat, immediately upon completion of two hours' overtime.

There exists a local arrangement at Halifax made pursuant to Article 5.1. The arrangement is as follows:

All Motormen.

Effective immediately the following procedures are to be followed when overtime is to be worked in either P&D Fleet, CNTL Fleet or Piggyback Fleet at Halifax. P&D Fleet

When overtime is required to be worked in the P&D Fleet, the following order is to be followed:

1. Senior motorman qualified in P&D available.
2. Senior Piggyback motorman available.
3. Senior CNTL motorman available.
4. Senior qualified spareboard man available.

CNTL Fleet

1. First choice will go to man on opposite route, if available.
2. Senior qualified CNTL motorman available.
3. Senior qualified Piggyback motorman available.
4. Senior qualified P&D motorman available.
5. Senior qualified spareboard man available.

Piggyback Fleet

1. Senior qualified Piggyback motorman available.
2. Senior qualified CNTL motorman available.
3. Senior qualified P&D motorman available.
4. Senior qualified spareboard man available.

All Motormen, Halifax Fleet, are hereby requested to submit in writing to your Fleet Supervisor your willingness to accept or not to accept overtime calls. It would be appreciated if this information could be in the hands of the Fleet Supervisor by 0900 hours February 9. From this information lists of men will be compiled for each segment of the Halifax Fleet, namely: P&D, CNTL and Piggyback.

This information is most necessary in order to eliminate the need for calling Motormen for overtime in seniority order when some do not wish to work overtime. Lists will be published February 10 and will be comprised of Motormens' names and phone numbers and in the order as desired above.

The reference to the “CNTL Fleet” is a reference to highway service. Motorman Stillman, the grievor, was on the list to be called for overtime for such work. Motorman Mitchell, who did the work, was regularly assigned to pick-up and delivery, and was not on the list of those to be called for highway overtime.

It is clear that the “Halifax Fleet” is divided into certain operational segments. Mr. Mitchell, a pick-up and delivery driver, would not, it seems, normally be assigned to highway work. It appears, however, that he did have the necessary qualifications, and apart from the rights of other employees to be assigned to such work, his assignment to it would not seem to be improper. On the day in question he worked in the Halifax terminal on his regular work from 1600 hours until approximately 22:00 hours, when he was instructed to drive the extra tractor trailer unit to Port Hawkesbury. He left Halifax at 22:30 hours, one and one-half hours prior to completion of his regular shift. He arrived back at Halifax at 0830 hours the following morning.

It was the company’s submission that in assigning overtime work reference would be made to the lists established pursuant to the local agreement where it was necessary to call someone in for overtime work. Someone simply continuing on with his regular assignment would not be displaced, but would continue to perform it on an overtime basis where necessary. This may well be correct, and it may be noted that the procedure set out in the local arrangement is one in respect of “overtime calls”. In the instant case, however, an employee was transferred from his regular assignment in one segment of the Halifax Fleet to perform work coming within the scope of a regular bulletined job in another segment of the fleet. The first hour and one-half of this latter work was within his regular time, but the bulk of this “temporary assignment” was on overtime, and would have constituted a day’s work for an employee entitled to be called.

Certainly the Company could not have called in Mr. Mitchell to perform this work, for that would have been contrary to the local agreement. In fact, however, it is my view that the transferring over of an employee who happened to be on the premises was, relative to the work to be done, virtually equivalent to calling him in, although its effect would be to evade the necessity of complying with the local arrangement. In my view, the extra trip to Hawkesbury required that someone be called in to perform the work, and the local arrangement sets out the procedure to be followed. That procedure was not followed, and the company was in violation of the arrangement and correspondingly of the collective agreement.

Accordingly, the grievance is allowed. It is my award that the grievor be paid the amount claimed.

(signed) J. F. W. WEATHERILL
ARBITRATOR