

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 310

Heard at Montreal, Wednesday, October 13th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

The Brotherhood claims that employees required to undergo medical examinations outside their normal working hours are entitled to financial compensation.

EMPLOYEES' STATEMENT OF ISSUE:

Periodically, Canadian National requires employees who operate Company-owned motor vehicles to undergo medical examinations outside their normal working hours.

The Brotherhood claims that such employees are entitled to penalty rates in accordance with Article 5.1 of Agreement 5.1 and to actual transportation expenses incurred to and from the medical department of the Company.

The Company claims that employees who operate Company-owned motor vehicles are required, as a condition of employment, to undergo periodic medical examinations and, whenever possible, employees are sent to the clinic during their working hours; however, for employees on the afternoon and midnight shifts, the clinic hours does not make this possible.

The Company contends that Article 5.1 has not been violated, and has denied the claim.

FOR THE EMPLOYEES:

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

There appeared on behalf of the Company:

D. O. McGrath – System Labour Relations Officer, Montreal
A. D. Andrew – System Labour Relations Officer, Montreal
W. Wilson – Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

J. D. Hunter – Regional Vice-President, Toronto
J. A. Pelletier – National Vice-President, Montreal
R. Jones – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

Although it is not so specified in the employees' statement of issue, it was acknowledged by the union at the hearing of this matter that the grievance is brought only on behalf of garage mechanics working at the Express-Freight Terminal in Toronto. The grievance does not refer to particular cases, and it would seem that what is sought is in the nature of a declaration.

This is, in essence, a claim that employees are entitled to payment of wages in certain circumstances when they are not actually performing the work appropriate to their own classifications. Generally speaking, it may be said that employees are entitled to payment of wages when they are at work, subject to the direction and control of their employer. Whether or not an employee is at work and entitled to wages is a question of fact, to be determined according to the circumstances obtaining in any particular case.

Such questions have arisen in various cases, including three in the Canadian Railway Office of Arbitration, namely, **Case Nos. 122, 220, and 311**. In **Case No. 122** an employee taking a test of driving ability was held to be entitled to payment of wages for the time involved, and in **Case No. 311** it is held that an employee taking a medical examination for the purpose of determining his ability to meet the requirements of a posted job is entitled to payment of wages for the time involved. In **Case No. 220**, it was held that an employee required to report for a disciplinary investigation was not entitled to such payment.

The company requires all job applicants to be medically examined before entering service (there is no question as to that in these proceedings), and it requires employees in certain classifications to be medically examined at what it considers to be appropriate intervals. This requirement, in my view, is quite proper; the company is entitled to assure itself of the continuing ability of its employees to meet the qualifications for their jobs, and these may include qualifications of health. The question is whether the time which the company requires them to spend so that it may be so assured is time for which the employees are entitled to compensation by way of wages.

In most cases, it seems, the company arranges for employees to take the required medical examinations during working hours, and they are paid wages in respect of that time. This would appear to be proper. When, however, the medical examinations are required to be taken outside of working hours, employees are not paid, and it is with respect to such times that the present grievance is brought. Since the medical examinations are required to be taken in order that the company may satisfy itself as to the continuing capabilities of its employees to meet its specifications for their jobs, it seems clear to me, as in **Case No. 311**, that the employees are, when undergoing such examinations, subject to the direction and control of the company, and spending time on a matter relating to their work and in the course of their employment.

For the foregoing reasons it is my view that employees would, in the circumstances described, be entitled to payment in accordance with the wage provisions of the collective agreement for time so spent. My award is to declare accordingly.

(signed) J. F. W. WEATHERILL
ARBITRATOR