

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 375

Heard at Montreal, Tuesday, September 12, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim of Mr. A. Poulin, Car Record Clerk, Contrecoeur, Quebec, for four hours' overtime on 15, 22 and 29 May, 1971, respectively.

JOINT STATEMENT OF ISSUE:

On each of the days in question, the Company called the Agent-Operator to work four hours on one of his rest days. In each case he spent approximately two hours and thirty minutes doing work he normally performs on his regular assigned days, and approximately one hour and thirty minutes performing other duties.

Mr. Poulin submitted a grievance claiming four hours' pay at the overtime rate, on the basis that the work performed by the Agent-Operator was that of a Car Record Clerk. The Brotherhood contends that, by giving the work to the Agent-Operator, the Company violated Articles 2.1 and 5.8 of the collective agreement.

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:

W. S. Hodges – System Labour Relations Officer, Montreal
G. J. James – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier – National Vice-President, Montreal
L. K. Abbott – Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

Article 2.1 of the collective agreement, which must be read together with Article 10 and Appendix 1, constitutes the recognition clause. There is no doubt that persons employed in the classification of Car Record Clerk, as is Mr. Poulin, come within the bargaining unit.

Article 5.8 of the collective agreement is as follows:

5.8 Employees required to work on their assigned rest days shall be paid at one and one-half (1-1/2) times their hourly rate with a minimum of three (3) hours for which three (3) hours service may be required, except:

- (a) as otherwise provided under Article 6.
- (b) where such work is performed by an employee moving from one assignment to another in the application of seniority or as locally arranged.
- (c) where such work is performed by an employee moving to or from an extra, laid-off or preferential list.

This article deals with the matter of payment for persons required to work on their assigned rest days. In this case, the grievor's complaint is that he was not so assigned, and the article does not apply. If Mr. Poulin had been assigned to work on the day in question, than the article would have applied with respect to his payment.

Article 4.13 of the collective agreement is as follows.

4.13 Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who would otherwise not have 40 hours of work that week; in all other cases by the regular employee.

By this provision, the "regular employee" would be entitled to be assigned extra work in his classification, subject to the particular provision of the article. No question arises here of the rights of any other employee: Mr. Poulin was the only person in his classification at Contrecoeur. If he was the "regular employee" to perform the work required then it would appear that by Article 4.13 he was entitled to be assigned to it.

The work in question consisted in part of work normally performed by the Agent-Operator (who comes within a different bargaining unit) and in part of work which comes within the scope of a Car Record Clerk's duties. The particular tasks which were performed that day and which would come within the scope of a Car Record Clerk's duties were not, however, exclusive to that job. They were tasks which, in association with others, could properly come as well within the scope of an Agent-Operator's duties. On the day in question, the Agent-Operator spent approximately two hours and thirty minutes doing work he normally performs. The work he performed for the remaining one hour and thirty minutes was of the sort usually performed by the grievor. The performance of this work did not, in the circumstances, make the Agent-Operator a Car Record Clerk. He was at work in the capacity of Agent-Operator and was properly required to perform certain tasks which, as it happens, might also have been performed by the Car Record Clerk. But the whole job performed by the Agent-Operator that day was not that of a Car Record Clerk. Accordingly, it cannot properly be said that the grievor was the "regular employee" for the work which was done.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR