CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 393

Heard at Montreal, Tuesday, December 12th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

EX PARTE

DISPUTE:

The Brotherhood claims the Company violated Articles 12 and 13 in the 6.1 Agreement When it requires P&D Drivers at St. John's to work through their meal periods for straight time rates.

EMPLOYEES' STATEMENT OF ISSUE:

The Company requires P&D Drivers to work through their meal periods for straight time rates. The Brotherhood demanded that such meal periods must be paid at punitive overtime rates and is in violation of Article 12 and 13 of the 6.1 Agreement.

The Company denied the Brotherhood's demands and relies on Article 12.8 as authority to pay straight time rates.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

There appeared on behalf of the Company.

P. A. McDiarmid	– System Labour Relations Officer, Montreal
D. MacDonald	– Agreements Analyst, Moncton

And on behalf of the Brotherhood:

E. E. Thoms	– General Chairman, Freshwater
M. J. Walsh	– Local Chairman, St. John's

AWARD OF THE ARBITRATOR

This grievance relates to the payment of employees required to work through their meal periods.

Generally speaking, a meal period is not paid time and does not count in the computation of time worked. By Article 12.1, a day's work consists of eight consecutive hours of service, exclusive of the meal period. Meal periods of not less than thirty minutes and not more than one hour (subject to local arrangement, and it seems in some cases periods of one and one-half hours are taken) are provided for by Article 12.7, which also specifies certain times at which meal periods are to be allowed.

Article 12.2 provides that employees may be allowed to work eight consecutive hours and allowed twenty minutes for lunch without deduction of pay Article 12.8, on which the Company relies, is as follows:

> **12.8** If time in which to eat is not allowed within the agreed time limit, and is worked, such time shall be paid for at the hourly rate and twenty minutes for lunch, without deduction in pay, shall be allowed at the first opportunity.

In the instant case, it is argued by the Union that where employees are required to work through their meal period they should be paid therefor at overtime rates. Where employees are required to work through meal periods, they are subsequently allowed twenty minutes for lunch without deduction of pay. This twenty minute period is not related to the length of the lunch period usually taken by an employee but is obviously simply an agreed period during which an employee remains "at work" but is given a break from his assigned task in order to satisfy the natural requirement of a quick meal. The fact of payment for that period when the employee is not required to perform his assigned tasks ought not, I think, to be regarded as indicating that a form of overtime payment is involved.

Where, as contemplated by Article 12.2, an employee works eight consecutive hours, being allowed twenty minutes for lunch, he is of course entitled to eight hours' pay, and it is clear that this would be eight hours at straight time rates. To the extent this grievance may relate to a claim that part of such an eight-hour period should be paid for at overtime rates, it cannot be allowed. The instant case, however, appears to relate to situations where employees have a meal period in the course of an eight-hour day as contemplated by Articles 12.1 and 12.7. Where, in addition to their eight hours' regular work, they are required to work through the meal period (being, again, given twenty minutes "at work" time to have lunch), it is contended by the Union that overtime rates should be paid. In this, the Union relies on Articles 13.1 and 13.8 of the Collective Agreement. Those articles are 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 times 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.

(Article 12.5 is not material to the instant case)

> **13.8** There shall be no overtime on overtime. Time worked in excess of 40 hours in a work week shall be paid for at one and one-half times the hourly rate, but overtime hours paid for under Article 13.1 shall not be utilized in computing the 40 hours per week. However, up to eight hours paid for on holidays or when changing shifts may be so utilized. In addition, time paid for as arbitraries or special allowances (e.g., attending Court, deadheading, travel time) shall be utilized in computing overtime when such payments apply during assigned working hours, or where such time is now included under existing Articles in computations leading to overtime.

By these provisions, it is clear that overtime hours, whether under Article 13.1 or Article 13.8, are to be paid for at overtime rates. The question in this case is whether, when an employee is required to work through his meal period (except in the circumstances contemplated by Article 12.1, dealt with above, he is working overtime, or, more particularly, whether time so worked is to be utilized in computing overtime under the provisions of Article 13. It may be observed that the question before me is to be determined under the provisions of the collective agreement. Any question as to the effect of the **Canada Labour Code** in the circumstances is a matter as to which I have no jurisdiction.

It is the Company's contention that the matter is governed by Article 12.8, which clearly applies to the circumstances in issue. That article provides that "such time shall be paid for at the hourly rate". I see no ambiguity in this provision. It is quite clear as to the rate to be paid. What is not expressly set out in the agreement, however, is whether or not such time is to be utilized in computing overtime. Overtime is payable, as the sections of Article 13 set out above indicate, for time worked "continuous with, before or after the regularly assigned hours of duty" under Article 13.1, or for time worked "in excess of 40 hours in a work week" not considering hours payable under Article 13.1). If it were not for the provision in Article 12.8, then it would seem clear that the time in question would have to be paid for as daily or weekly overtime as the case may be – that is, that that time would be utilized in the computation of overtime. But the provision for payment in Article 12.8 is different from the provision for daily overtime in Article 13 and if the periods of time in question were considered as coming within Article 13.1, then Article 12.8 would be inconsistent. It is clear from what has been said earlier and I think it is the necessary effect of Article 12.8, that the time in question is not to form part of any overtime period contemplated by Article 13.1.

As to Article 13.8 however, the only question is whether the period in question constitutes "time worked" and in the instant case it is clear that it does. It is not otherwise payable as overtime, and so is not excluded from the computation by reason of any of the provisions in Article 13.8. Further, it may be noted that even time paid for as "arbitraries" is utilized in computing overtime. No reason appears why time worked during what would otherwise have been a lunch period should not be included. The provision of a subsequent opportunity to have lunch is not, for the reasons set out earlier, a sufficient reason to distinguish this from other periods of time, or to conclude that the net effect of the paid twenty-minute lunch period is equivalent to the payment of overtime for the time worked. In any event, there are cases, depending on the length of the lunch period, where this could not be the case.

Accordingly, it is my conclusion that in calculating overtime pursuant to Article 13.8, time worked during a meal period paid pursuant to Article 12.8 may be utilized. Articles 12 and 13 deal with distinct, although related matters and there is no inconsistency in applying both Article 12.8 and Article 13.8 in this manner.

To the extent herein set out, then, the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR