

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 424

Heard at Montreal, Tuesday, November 13, 1973

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claims by Administration Clerk J. Caines and Warehouseman Grade 3 G.E. Bennett for a two hour and 40 minute call-in in regard to the Company's delivery of a livestock shipment to a customer in Port aux Basques on April 22, 1973.

JOINT STATEMENT OF ISSUE:

On Sunday, April 22, 1973 Gulf Services Clerk A. Osmond delivered traffic and collected charges on a shipment of cattle consigned to C. Ford, Port aux Basques.

Claims were laid by Administration Clerk J. Caines and Warehouseman Grade 3 G.E. Bennett for two hours and 40 minutes and charged the Company with violation of Article 12.15 in the 6.1 Agreement.

The Company has denied the claim.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) E. E. THOMS (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN Assistant Vice-President, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal

G. J. James – Labour Relations Assistant, Montreal

W. Agnew – Labour Relations Assistant, Moncton

C. Hamlyn – Personnel Assistant, Montreal

W. Vardy – Terminal Traffic Manager, Port aux Basques

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater

P. Lomond – Local Chairman, Port aux Basques

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AWARD OF THE ARBITRATOR

Article 12.15 of the Collective Agreement provides as follows:

12.15 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 will otherwise not have 40 hours of work that week. In all other cases by the regular employee.

This provision, or provisions similar to it in other collective agreements, has been the subject of a number of awards in the Canadian Railway Office of Arbitration. While many of these cases involved quite different issues from that in the instant case, **Case No. 174** would appear to be closely analogous, since it involves a claim by employees in the group to perform work which was performed by members of another.

As far as the grievors were concerned, the work in question was not part of any assignment. The Express facility at Port aux Basques is not open on Sundays, and it was on a Sunday that the work was performed, by a member of the Gulf and Coastal Services staff. The latter group does work on Sundays, and the employee who performed the work did so in the course of his regular assignment.

Now if the Company had determined that work on that day was required involving Express employees, it seems clear that Article 12:15 would apply with respect to the assignment of work as between them. No question arises as to extra or unassigned employees, and the question would simply be who was the "regular employee" and, perhaps, how work should be distributed as between regular employees, a matter which has been dealt with in some of the other cases.

In the instant case, as in **Case No. 174**, the question of substance really is whether the grievors have an exclusive claim to the performance of the tasks which were performed by the Gulf and Coastal Services employee on the date in question. Article 12.15 does not in itself deal with the question of whether any particular classification should perform any particular work. As between themselves and some other Express employees, then the grievors may indeed be the "regular" employees to perform the work, but the work certainly was within the competence of the employee who performed it (although that is not a decisive factor) and, more importantly, he performed it as he or others had been accustomed to do in the course of their regular work whenever the Express office was closed.

It has not been shown that the grievors, or persons in their classifications, had an exclusive right to the performance of the work in question. I can find no violation of the collective agreement in the Company's having that work done by a Gulf and Coastal Services employee in the course of his assignment, in the circumstances of this case. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR