CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 462

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Between the Brotherhood of Maintenance of Way Employees concerning the application of Section 2(c) of Wage Agreement No. 14.

JOINT STATEMENT OF FACT:

On May 4, 1973 the hours of work for Sectionman C.J. Pomerleau were changed from 0800 to 1700 to 1800 to 0600. It is the position of the Union that since the Company did not notify the Union officers in accordance with Section 2, Clause 2(c), C.J. Pomerleau's regularly assigned hours continued to be 0800 to 1700 and that all work performed outside such regularly assigned hours should be paid at overtime rates.

It is the position of the Company that the regularly assigned hours of Sectionman C.J. Pomerleau were changed to 1800 to 0600 and that the overtime rates paid for time worked after 0200 met the requirements of Wage Agreement No. 14.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) G. D. ROBERTSON (SGD.) R. A. SWANSON

SYSTEM FEDERATION GENERAL CHAIRMAN GENERAL MANAGER, Operation & Maintenance

There appeared on behalf of the Company:

M. Yorston – Supervisor Labour Relations, Montreal

M. G. Mudie – Assistant Supervisor Labour Relations, Montreal

J. E. Cameron – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

F. Borsa – System Federation General Chairman, Ottawa

G. D. Robertson – Vice-President, Ottawa

A. Passaretti – Federation General Chairman, Ottawa

H. J. Thiessen – General Chairman, Calgary

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AWARD OF THE ARBITRATOR

Section 2, Clause 2(c) of the collective agreement provides as follows:

2 (c) Notwithstanding the provisions of paragraph (a) hereof, the starting time for employees living in boarding cars or other mobile

> units may be established or changed to meet the requirements of the service. When the starting time is to be changed, as much advance notice as possible, but not later than at the completion of the previous tour of duty, shall be given the employees affected and, where practicable, the notice will be posted promptly in a place accessible to such employees. The appropriate Local Chairman and the General Chairman shall be advised of any change in starting time.

While the Company appears to have advised Mr. Pomerleau of the change in his hours of work – a change which the Company was entitled to make – in timely fashion, it did not advise the appropriate Local Chairman or the General Chairman prior to the change being made. I am in agreement with the Union's contention that the giving of such notice is a condition of the implementation of such change, and it would follow as the appropriate redress for this violation, that hours worked outside of the original scheduled hours would be overtime until the requirements of the collective agreement were met. I agree as well that no individual agreement between the employee concerned and the Company could operate so as to alter the effect of the provisions of the collective agreement, or to prevent the Union from proceeding in this matter as it has done.

It is therefore my conclusion that Mr. Pomerleau is to be paid at overtime rates in respect of hours worked outside of his old schedule. By Section 5, Clause 12 of the collective agreement, there is to be no retroactive payment beyond a period of 60 calendar days prior to the date the grievance was submitted. This limitation is not one which need be expressly raised or referred to in the Joint Statement, and effect must be given to it. This grievance was submitted on October 15, 1973. It is accordingly my award that Mr. Pomerleau be paid in accordance with the foregoing for the period from August 16, 1973, until the time notice was given to the Union. Since the Union obviously had notice of the change by the date of the grievance, no payment would be made in respect of that date or thereafter.

(signed) J. F. W. WEATHERILL

ARBITRATOR