

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 596

Heard at Montreal, Tuesday, March 8th, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Payment at punitive rates for hours beyond eight to an employee undergoing a non-periodic Company medical at an away from home location.

JOINT STATEMENT OF ISSUE:

Mr. W. Cross, Chauffeur at Belleville, Ontario had been absent from work due to illness from November 25, 1975 until January 28, 1976 inclusive. Prior to being allowed to return to work Mr. Cross was required by the Company to have a medical examination at its Toronto offices which he underwent on January 29, 1976.

Mr. Cross has already been compensated for his expenses incurred on January 29, 1976. However, the parties while agreeing that Mr. Cross should be paid for 10 hours and 40 minutes for January 29, do not agree on the amount of such payment. The Brotherhood is seeking eight hours pay at pro rata rates to cover a normal day of work for January 29 plus 2 hours and 40 minutes at punitive rates under the provisions of Articles 4 and 5. The Company is prepared to pay the eight hours at pro rata rates to cover a normal day of work for January 29 but contends that the 2 hours and 40 minutes should be paid at pro rata rates under the provisions of Article 18.2.

The grievance was processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEE:

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

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal
G. W. Clayton – Employee Relations Officer, Montreal
W. 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

AWARD OF THE ARBITRATOR

It is acknowledged that the grievor, being required to attend at a medical examination conducted by the Company, was, while acting under the company's direction and control, "at work" in the sense that he was entitled to compensation for the time involved.

The total time involved, as the parties agree, is some ten hours and forty minutes, being the period from the time the grievor left Belleville for Toronto by train until he returned, and including approximately four hours actual travel time and an hour and fifteen minutes for the medical examination. The Company has agreed that the grievor should be paid for a normal day of eight hours, and that he should be paid proper expenses. The issue now outstanding is as to the rate of pay for the remaining two hours and forty minutes.

The Union's position is that the time in question should be paid for as overtime under Article 5.1. The Company's position is that the grievor is only entitled to be paid at straight time, pursuant to Article 18.2 That Article is as follows:

18.2 A regularly assigned employee required to perform service away from the station at which regularly employed will be compensated in accordance with the schedule rules applicable at the point at which such service is performed for the time actually worked. Unless sleeping car accommodation is furnished or paid for by the Company such employee will be compensated at the hourly rate for the time occupied in travelling. The number of hours paid for will not be less than he would have earned on his regular assignment. Necessary actual expenses will be allowed while away from Headquarters when supported by receipts.

That article contemplates the performance of "service" for which specific schedule rates apply, and distinguishes between "time actually worked" and "time occupied in travelling". In my view, that article does not deal with the sort of situation which is involved here, where the grievor was not performing any particular type of service and was only "at work" in the sense that he was acting in accordance with the Company's instructions and was entitled to payment for his time. Special considerations would no doubt arise where overnight or extended travel is involved, but in the circumstances of this case, it is my view that the fact that the grievor was required to travel to the site of his medical examination is irrelevant. His claim would be the same if the examination had been in Belleville, and he had simply had to wait in a doctor's office.

Accordingly, it is my view that the grievor's time should be compensated on the basis of a normal day plus overtime, that is, under the terms of this collective agreement, on the basis of eight hours at straight time and the balance at time and one-half, in accordance with Article 5.1.

For the foregoing reasons, the grievance is allowed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR