

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 623

Heard at Montreal, Tuesday, July 12th, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that the Company violated Sections 2.3, 4.1, 5.1, 8.2, 8.3, 8.6 and 9.1 of Wage Agreement No. 17 when it required Section Foreman E.W. Glenn to work on his assigned rest days (March 27, 28, April 10, 11, 24, 1976) and paid him therefor at his straight-time rate and when it denied him the privilege of working his regular assignment on April 2, 5, 15 and 19, 1976. Claim is for twenty (20) hours of pay at the grievor's straight-time rate for March 27, 28, April 10, 11 and 24, 1976 and for thirty-two hours (32) of pay at his straight-time rate for April 2, 5, 15 and 19, 1976.

JOINT STATEMENT OF ISSUE:

The grievor is a regularly assigned section foreman on the Kingston Subdivision. He was regularly assigned to a work week extending from Monday through Friday with Saturdays and Sundays designated as rest days.

Beginning March 27, 1976, the Company had need of a local section foreman to provide flag protection on the Kingston Subdivision for Regional Rail Gang No. 41. To this end the grievor was assigned to work periods consisting of ten consecutive work days, including certain Saturdays and Sundays, followed by four consecutive rest days. The employees contend that such assignments were in violation of Sections 2.3, 4.1, 5.1, 8.2, 8.3, 8.6, and 9.1 of Wage Agreement No. 17 and practice thereunder, and that the Company's refusal to allow the grievor pay at his time and one-half rate for March 27, 28, April 10, 11 and 24, 1976 was in violation of Sections 5.1, 8.2, 8.3 and 9.1 of Wage Agreement No. 17.

The employees further contend that the Company's refusal to allow the grievor pay at his straight-time rate for April 2, 5, 15 and 19, 1976 was in violation of Sections 2.3, 4.1 and 8.6 of Wage Agreement No. 17.

The employees contend that Section 5.2 of Wage Agreement No. 17 must yield to Part III, Division 1, Sections 29, 32 and 33 of the Canada Labour Code.

FOR THE EMPLOYEE:

(Sgd.) P. A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal
V. E. Gannon – System Labour Relations Officer, Montreal
B.F. Bahm – Maintenance Engineer, Belleville

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
G. D. Robertson – Vice-President, Ottawa
W. H. Montgomery – General Chairman, Belleville

AWARD OF THE ARBITRATOR

The grievor held a regular assignment, and was temporarily assigned to other work, with a different schedule of work and rest days. If his assignment to the temporary job was improper, then it is acknowledged that, under the temporary assignment, he would be entitled to overtime payment in respect of work on days which ought to have been rest days. Whether or not the grievor would be entitled to payment for days on which he did not work, but would have worked under his regular schedule, is not a matter which needs to be decided in this case.

The grievor's regular schedule appears to have been proper, and there is no dispute in this case as to the schedule, as such, of the assignment to which the grievor was temporarily transferred. The issue in this case relates only to the grievor individually, and the question is whether, if he was properly transferred, he was then subject to the schedule of the assignment to which he was temporarily transferred.

The grievor was entitled to the benefit of the position which he regularly held, subject to the terms of the collective agreement. The collective agreement does, however, contemplate temporary transfers, and the company may in a proper case require an employee to accept such a transfer. The employee is not thereby demoted: even if the job to which he is temporarily transferred bears a lower wage rate, he would, at least in the circumstances, be entitled at least to the rate of his regular classification, and that rate appears to have been paid in this case.

There is no question raised in this case as to relative liability or entitlement to temporary transfer as between the grievor and any other employee.

It seems clear to me that on being temporarily transferred, the grievor became subject to the schedule of the assignment to which he was transferred. He did not bring the hours of his own regular assignment with him any more than any other employee taking up an assignment brings his own hours with him. Schedules of work are not personal to the employees, but are part of the terms of each assignment. The schedule which the grievor was given was that of his temporary assignment. While there had been no agreement between the parties relating to the grievor's hours, there had been agreement as to that assignment generally, and the grievor became subject to those hours when he was temporarily transferred to that assignment. From the material before me, it appears that there was a *bona fide* transfer: the grievor was temporarily assigned to duties as Flagman on the Regional Gang; he was replaced in his regular assignment by his Assistant Foreman who was in turn replaced, and it does not appear from what is before me in this case that these moves were improper.

A claim for overtime must be related to the hours of an employee's assignment. Likewise a claim that an employee has been deprived of regular work in order to balance overtime must be related to the hours of regular work on his actual assignment. Here, the grievor worked the hours of his actual, if temporary, assignment to the Regional Gang. He worked those hours, and apparently no more. He is not entitled to overtime or other payments except in relation to the hours of that assignment.

For the foregoing reasons, the grievance is dismissed.

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