

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 626

Heard at Montreal, Tuesday, September 13th, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Overtime arrangement for Express Centre in Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

A letter dated February 16, 1966 was addressed to Mr. R. McGregor, then local Chairman of the Brotherhood by Mr. W.G. Eyford, then Superintendent Express.

The Brotherhood contends that this letter constitutes a local arrangement within the context of Article 5.1 of Agreement 5.1.

The Company holds that there is no "local arrangement" in effect for overtime at Winnipeg Express Centre.

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:

A. D. Andrew	– System Labour Relations Officer, Montreal
C. L. LaRoche	– System Labour Relations Officer, Montreal
J. J. Dawson	– Manager Winnipeg Express Centre, Winnipeg
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg
T. E. Allison	– Labour Relations Officer – Express Division, Montreal

And on behalf of the Brotherhood:

W. H. Matthews	– Regional Vice President, Winnipeg
R. McGregor	– Local Chairman, Winnipeg
J. D. Hunter	– Regional Vice President, Toronto

AWARD OF THE ARBITRATOR

The letter of February 16, 1966, referred to in the Joint Statement of Issue, is as follows:

Reference your letter 31 January and the meeting held in our office regarding overtime as mentioned in your letter 18 December to Mr. W. B. Scott.

Regarding Item 1, we agree with the contention that overtime belongs to the classification, in other words, Waybill Clerks for Waybill Clerks, Porters for Porters, and Motormen for Motormen. In the last instance you will recall we agreed that Motormen who leave their trucks after their tour of duty in the evening will not have to unload traffic except for the shipments for early departure.

We agree with Item 2, but I believe that, for instance, if a Waybill Clerk did not desire to work overtime and if one of the clerical staff was not experienced in this type of work, we would attempt to secure someone from the Porter staff, but not until we exhausted our efforts in the clerical staff.

We are in agreement with your interpretation in lets 3 and 4.

Regarding Item 5, we have in the past increased staff when we have found it necessary and particularly with the thought to eliminating as much overtime as possible. By increasing staff I mean the permanent ones, and recently this was increased by twenty-three in the Office, Shed and Motor Service.

If there are any differences in my confirmation please let me know.

Article 5.1 of the collective agreement is insofar as material, as follows:

Subject to the provisions of Article 4.4, 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 at one and one-half times the hourly rate of pay in minimum increments of fifteen minutes. Every effort will be made to avoid the necessity for overtime; however, when conditions necessitate, employees will perform authorized overtime work as locally arranged

The issue is whether what is set out in the letter of February 16 constitutes a "local arrangement" within the meaning of article 5.1.

The letter of February 16, 1966 refers to a number of points which had been raised in previous correspondence between the parties, and which are fully set out in a letter from the Union to the Company dated December 18 1965. That letter is as follows:

Re Article 5.1, concerning the provision whereby employees will perform authorized overtime work as locally arranged.

Having had the chance to see how overtime can be worked as arranged on the afternoon shift, it was agreed at our "Local" meeting Dec. 14th, that this principle be applied to all shifts. However, there are a number of conditions that also must be applied, which are;

1. Only employees employed in the classification of work where the overtime occurs will be allowed to perform such overtime, e.g. Porters shall perform the overtime requiring porters. Motormen only to perform overtime on duties requiring motormen, such as driving trucks and unloading trucks. Clerical force shall perform their own overtime. The clerical force shall include office staff, transfer clerk, money and value clerk and waybill clerks.
2. In the event that the incumbent of the position requiring the overtime does not signify that he desires overtime, the next senior man in that classification shall be given the opportunity to work e.g. If the requirement for waybill clerks is not met by the waybill clerks themselves, then someone else in the clerical work force shall be given the opportunity to work the overtime. If someone from the clerical work force does not desire the overtime, then it would be permissible to obtain someone from the Porter or Motormen work force.

3. Work on 6th and 7th days shall be performed in accordance with the aforementioned procedures.
4. Work on statutory holidays shall be performed in accordance with the aforementioned procedures.
5. It shall be incumbent upon the company to show the Local Chairman that overtime is unavoidable, e.g. If one of the following conditions exists, revenue is up, tonnage, shipments or number of pieces being handled is up, management must show that they have created enough regular assignments to handle such increases. This shall not be construed to mean increases in business of 5 days or less or the following conditions outlined in the Labor Code, Part 1 Section 10 a, b, c.

With this submission, I respectfully request your acknowledgment of the above arrangements.

The several points referred to were the subject of correspondence between the parties, and in particular of letters dated January 28 and January 31, 1966. Following the Company's letter of February 16, 1966, set out above the Union replied on February 21 as follows:

Items one to four are in line with the recent discussions held in your office and also what was contained in my letter of December 18th, 1965. I therefore am requesting of you, that copies of this understanding be sent to the following persons: General Agent, Terminal Agent, Motor Vehicle Supervisory Staff and all Foremen and Assistant Foremen and two true copies to myself, one of which I will return to you as a signatory to the understanding. What I have requested here is for the purpose of eliminating any possible misunderstanding.

As to Item #5:

I feel that the employees' representative should be able to discuss this question jointly, as to when staffs should be increased instead of in a hit and miss fashion. I therefore request of you the understanding e.g. If a total of twelve hours overtime was worked by the afternoon porters five days continuous, then staffs will be increased proportionately the following week. If the condition continues for a second week, a suitable advice covering the necessary amount of positions to eliminate the overtime will be issued. If the condition exists at the end of sixty days, a bulletin will be issued to cover the situation.

Trusting to hear favorably from you on these understandings.

Subsequently, on February 24, the Company furnished the Union with copies of the "understanding", although Item 5 in the correspondence was dealt with as a separate matter.

From the foregoing, it is clear to me that a local arrangement, as contemplated by article 5.1 of the collective agreement, was made and that it included Items 1 to 4 set out in the Union's letter of December 18, 1965, subject to the other correspondence above referred to. There was no agreement with respect to Item 5.

There is no question before me as to the interpretation or application of this "local arrangement". The only question now in issue is whether such an arrangement in fact existed. From the material before me, I find that there was such a local arrangement, as contemplated by Article 5.1, and that it consisted of Items 1 to 4 of the Union's letter of February 16, 1966, as read together with the other correspondence above set out.

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