

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 637

Heard at Montreal, Wednesday, October 12, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Suspension of Security Guard F.M. Gravel for five (5) days without pay.

JOINT STATEMENT OF ISSUE:

Security Guard F.M. Gravel was suspended from service at 1910 hours, Friday, April 29, 1977 in connection with an allegation of insubordination in that he disobeyed a proper order by refusing to report for overtime at 0001 hours, May 1, 1977. Following a disciplinary hearing, Security Guard Gravel was assessed a five-(5) day suspension.

The discipline imposed was found to be too severe a penalty by the Union and was appealed. The Company declined the Union's appeal.

FOR THE EMPLOYEE:

(SGD.) M. PELOQUIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. C. MACHAN
CHIEF, DEPARTMENT OF INVESTIGATION

There appeared on behalf of the Company:

M. Yorston	– Labour Relations Officer, Montreal
J. G. Collins	– Supt. Department of Investigation, Montreal
J. M. Mickel	– Superintendent, Dept. of Investigation, Montreal
J. A. McGuire	– Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

M. Peloquin	– General Chairman, Montreal
F. M. Gravel	– Grievor

AWARD OF THE ARBITRATOR

The grievor is a Security Guard who has been in the service of the Company since March, 1973. For the week ending at midnight on Saturday, April 30, 1977, the grievor was assigned to work from 0800 to 1600 Monday to Friday, and he carried out this assignment. Following the conclusion of his shift at 1600 on Friday, April 29, the grievor was, or expected to be, off work until Monday, May 2, at 1600 hours.

However, the grievor was contacted at his home at about 1900 on Friday, April 29, and advised that he would be required to work overtime on Sunday, May 1, from 0001 to 0800. The grievor refused this assignment, indicating that he would be attending a party on the Saturday evening, and that he could not report at 0001 on Sunday, although he would report at 0400, if someone could be found to cover the first four hours of the shift. This could not be done, and the grievor was told that his services were absolutely required for the shift in question. The grievor refused the overtime assignment.

That the Company may require – and frequently does require employees to work overtime is not in dispute. Where an employee refuses overtime which is properly required of him, then discipline may be imposed unless it can be shown that the refusal was justified. In the instant case the Company did require the grievor to work overtime, and was not able to accommodate an exchange of shifts with another employee because there was an employee on vacation and a vacancy (filled shortly afterwards) in the classification. All the staff was needed over the course of the weekend, to be present during the unloading of a vessel which, it had been learned, would be arriving on the Saturday afternoon and was to be worked around the clock until it sailed Monday morning. There was, then, a legitimate need for the grievor to work overtime.

It is understandable that the grievor, having planned to attend a party, would not wish to work overtime beginning at midnight Saturday. It seems that the party was a twenty-fifth anniversary party which he had arranged, (although the grievor's statement is not clear on this point), so that it may be concluded that there was a certain personal obligation on the grievor to be present. The grievor refused the overtime assignment, knowing he would be considered subject to discipline.

While the grievor's feelings on the matter are understandable, the Company's needs were, as I have said, legitimate. It is simply an incident of the grievor's work that overtime may be required and that, because of the small number of security guards available, it may be unavoidable. Sacrifice of personal plans may be required from time to time, although there will be some personal situations which would prevail over the needs of the employer. The present case, however, did not involve that degree of urgency in my view, and did not justify the grievor's refusal to perform the overtime work.

Accordingly, it is my conclusion that there were grounds for the imposition of discipline. Having regard to the grievor's record, I would conclude that the suspension imposed was within the range of reasonable disciplinary responses to the situation. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR