CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 700

Heard at Montreal, Tuesday, March 13, 1979

Concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claims of crane operator M. Adams and crane oiler R. Marsh for overtime rates on June 17 and 18, and for straight time rates on June 12, 13, 19 and 20 when their assigned rest days were changed.

JOINT STATEMENT OF ISSUE:

The assigned rest days of operator M. Adams and oiler R. Marsh were changed from Saturday and Sunday to Monday and Tuesday for two weeks to coincide with the employees of the gang with which they were working. They were paid overtime rates for time worked on Saturday and Sunday, June 10 and 11 as these were the 6th and 7th days of that work week. The two employees, however, entered time cards for overtime rates on Saturday and Sunday June 17 and 18 and straight time rates for their new rest days, June 12, 13, 19 and 20, claiming a violation of Section 5.1 of the Collective Agreement. The Company declined the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) F. L. STOPPLER	(SGD.) F. S. CLIFFORD
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo	– Manager Labour Relations, North Bay
K. J. Wallace	– Chief Engineer, Facilities Maintenance, North Bay

And on behalf of the Brotherhood:

F. L. Stoppler	– System Fed. General Chairman, Winnipeg
R. F. Liberty	– Area Chairman, North Bay
G. D. Robertson	– Vice President, Ottawa
A. F. Currie	– Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

Article 5.1 of the collective agreement provides as follows:

Assignment of Rest Days

> **5.1** The rest days shall be consecutive as far as is possible consistent with the establishment of regular relief assignments and the avoidance of working an employee on an assigned rest day. Preference shall be given to Saturday and Sunday and then to Sunday and Monday. In any dispute as to the necessity of departing from the pattern of two consecutive rest days or for granting rest days other than Saturday and Sunday or Sunday and Monday, it shall be incumbent on the Railway to show that such departure is necessary to meet operational requirements and that otherwise additional relief service or working an employee on an assigned rest day would be involved.

This provision does not prohibit the Company from assigning days other than Saturday, Sunday or Monday as rest days. Rather, it imposes on the Company the burden of justifying the assignment of other days as rest days, where the necessity of such is disputed. In the instant case, that burden has been met. I am satisfied from the material before me that the change in question, which was temporary, was necessary to meet operational requirements (the crane was assigned to assist a work train gang which, in order to work when fewer trains were operated and regular section forces were off, worked weekends) and that, had the change not been made, working on an assigned rest day would have been involved.

I was not referred to any provision which would require any particular degree of notice of such change: it is not clear that Article 2.3, dealing with changes in starting times, would apply. In any event, more than forty-eight hours' notice of the change was given to the grievors, and while the Company did not itself give notice to the Local Chairman or General Chairman, the Union did in fact have notice and raised the matter promptly with the Company. Any necessary conditions to the implementation of the change, then, were met, and this case differs from **Case No. 462** in that regard.

The grievors' regular work week had been from Monday to Friday, with Saturday and Sunday as days off. They were advised of the change in schedule on Tuesday, June 6, that is in the course of the work week which had begun on Monday, June 5. Thus, when they worked on Saturday and Sunday, June 10 and 11, they were working the sixth and seventh days in a work week, and were entitled to payment therefor at time and one-half, pursuant to Article 8.3. Such payment was made.

The grievors were off work on Monday and Tuesday, June 12 and 13. These were their days off under their schedule then in effect. It was not a case of their being "required to suspend work" in order to "equalize overtime": the actual amount of work they performed during the whole period was not affected, although their earnings were increased by virtue of the application of Article 8.3. Article 8.7 had no application: a similar point (involving similar language in another collective agreement) was dealt with in **Case No. 163**.

The grievors were not entitled to be paid overtime for work performed on Saturday and Sunday, June 17 and 18, because those were regular working days under the schedule then in effect, and of which they had been advised on June 6. As for their claim in respect of Monday and Tuesday, June 19 and 20, that must fail for the reasons set out above with respect to June 12 and 13.

The change of schedule was, in the circumstances, a proper one, and the grievors were not entitled to any additional payments beyond those which they received. For the foregoing reasons, the grievances must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR