

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 740

Heard at Montreal, Tuesday, March 11, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim for overtime submitted by Mr. A. Niziol, Heavy Duty Mechanic, Symington garage, Winnipeg, Manitoba.

JOINT STATEMENT OF ISSUE:

On May 11, 1978, as a result of a regularly assigned mechanic "A" being absent from work on the day shift at the Winnipeg Intermodal Terminal garage, Mr. S. Rodniski, who was the senior available mechanic "A" in the garage department at Winnipeg, but working out of Symington garage, was called for an overtime shift. Mr. A. Niziol, who was assigned as Heavy Duty Mechanic at the Winnipeg Intermodal Terminal claims that he should have been called for the overtime according to the "1966 Local Overtime Agreement".

The Company declined the claim on the basis that the said overtime agreement does not apply to the garage employees and, even if it did apply, Mr. Niziol would not have been entitled to the overtime. Similar time claims have been submitted by other employees.

FOR THE EMPLOYEE:

(SGD.) J. D. HUNTER

NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra – Assistant Director, Employee Relations, Montreal
S. Duke – Manager, Employee Relations, Winnipeg

And on behalf of the Brotherhood:

W. H. Matthew – Regional Vice President, Winnipeg
R. McGregor – Local Chairman, Winnipeg.

AWARD OF THE ARBITRATOR

The Company's express operations at Winnipeg are carried on from two principal locations. One of these is the Express Centre at or near Symington Yard, and the other is the Winnipeg Intermodal Terminal, located several miles away. There is a garage connected with each of these operations a main garage at Symington Yard, and a "satellite" garage at the Winnipeg Intermodal Terminal.

It was held in **Case No. 626** that a local overtime arrangement had been made in 1966 governing the distribution of overtime at the Express Centre in Winnipeg. That arrangement, it is acknowledged, now applies in respect of the express terminal operations (that is the Express Centre and the Winnipeg Intermodal Terminal) which are now carried on in the two locations referred to. These are, it would seem (although the point is not in issue in this case) separate locations for the purposes of overtime distribution in accordance with the local arrangement.

Case No. 626 did not deal with the interpretation or application of the local arrangement. In **Case No. 739** it was held that employees in the Regional Accounts Receivable Office were not covered by that local arrangement. The instant case likewise turns on a determination of the scope of application of the local arrangement, although of course with respect to a different fact situation.

In the instant case the Company assigned certain overtime work to the senior available Mechanic "A" in its garage department to replace another Mechanic "A" who was absent. That would appear to have been in conformity with the general policy set out in the local understanding that "overtime belongs to the classification". The Mechanic "A" to whom the overtime was assigned, however, regularly worked at the garage associated with the Express Centre at Symington Yard, whereas the work was performed at the Winnipeg Intermodal Terminal garage. There was no Mechanic "A" available at location at the time. The grievor worked at the Winnipeg Intermodal Terminal garage, but in a different classification, that of Heavy Duty Mechanic. (There is, however, no issue of qualifications raised in this case). It is the Union's contention that under the overtime agreement, those employed in the classification of work "where the overtime occurs" are to be allowed the work and that failing such persons, someone else in that work force (such as the grievor) is to be used. The Union's case thus appears to turn on two points; first, that the local arrangement relating to overtime applies to garage operations; and second, that it requires the Symington Yard and Winnipeg Intermodal Terminal garage operations to be considered as two separate locations. This second point was not dealt with at the hearing and I make no determination with respect to it.

On the essential question, whether or not the local arrangement relating to overtime applies to garage operations, it may first be noted that the terms of the arrangement, contained in the correspondence set out in **Case No. 626**, do not appear to contemplate garage operations, although such operations existed at the time the arrangement was made. It is true that where reference is made to particular classifications, to "Waybill Clerks", "Porters" and "Motormen", such reference is by way of example, and the use of those examples would not necessarily serve to exclude persons in garage classifications from the arrangement. It is, however, significant that where the arrangement deals with the situation where persons are not available within a classification, it provides for resort to a broader "work force". It is said, thus, that "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". That is an example of how the system is to work. In continuing the example, however, the arrangement goes on to provide that "if someone from the clerical work force does not desire the overtime, then it would be permissible to obtain someone from the Porter or Motorman work force". The omission of any mention of the garage work force from this list of sources which might ultimately be drawn on, is at least suggestive.

More significant is the request made by the Union with respect to the distribution of the agreement. None of the supervisory staff mentioned, who would be expected to apply the agreement, were persons responsible for garage operations.

Since the arrangement does not contain any clear statement of the extent of the work force to which it applies, its scope must be deduced from such clues as those I have referred to and, as the Company contends, from the authority of the persons who entered into it.

The letter of February 15, 1966, said to constitute the local arrangement, was addressed to the then Local Chairman of the Brotherhood by the then Superintendent, Express Freight, Mr. Eyford. It is important to note that this letter, which set out the Company's agreement with certain of the Union's proposals relating to overtime, was in response to the Union's letter of December 18, 1965, to Mr. W.B. Scott, then the Terminal Agent at Winnipeg. That

letter sets out certain items which were included in the arrangement ultimately made, as the award in **Case No. 626** makes clear. Mr. Scott, as Terminal Manager, had no authority with respect to garage operations. At the hearing of this matter it was urged that Mr. Eyford did have some authority with respect to garage operations, although it was the Company's position that in terms of its organization at the time, he did not. It may well be that in view of Mr. Eyford's position as Superintendent Express Freight he did exercise some actual authority and control over garage operations. Mr. Eyford was, however, the direct superior of the General Agent (who was not responsible for garage operations) and the General Agent was the direct superior of the Terminal Agent. In replying as he did to the Union's letter to the Terminal Agent, Mr. Eyford cannot be said to have made any commitment with respect to garage operations, even if he had the authority to do so. In view of the contents of the correspondence, which I have described, any such commitment would have had to be in clear terms, and such simply do not appear.

For these reasons, it must be my conclusion that the local arrangement referred to in **Case No. 626**, and which continues in existence, does not apply to garage employees. Accordingly, the grievance must be dismissed.

(signed) J.F.W. WEATHERILL
ARBITRATOR