

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 760

Heard at Montreal, Tuesday, July 18, 1980

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Concerning claim submitted on behalf of N. Meier, Clerk (Car Control), Winnipeg C.S.C.

JOINT STATEMENT OF ISSUE:

On September 16, 1978, a one-day vacancy arose on the position of Clerk (Car Control), 0001 - 0800, due to absence of Mr. D. Zinger, who was then filling the position on a temporary basis.

The Company assigned the work to Mr. P. Stewart, an unassigned employee.

On September 16, 1978, Mr. N. Meier worked his regular position of Clerk (Rate & Bill), 0800 - 1600.

The Union contends that under Article 9.10(b)(2), Mr. Meier should have been called to work the 0001 - 0800 shift. A claim was filed for payment of eight hours at overtime rates.

The Company contends Article 9.10 had no application and denied the claim.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. J. SHEPP
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

J. A. Sampson – Supervisor Labour Relations, Winnipeg
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver
W. T. Swain – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 9.10 of the collective agreement is as follows:

9.10 ASSIGNMENT OF OVERTIME

(a) Work identifiable as belonging to a specific position. Work which is required to be performed at over-time rates shall be assigned, whenever practicable, to the occupant of that position.

(b) Work in a particular office, shed or work location which is not identifiable as belonging to a specific position due to there being two or more positions in the same job classification and performing the same work.

(1) Work which is required to be performed at overtime rates and which is brought about by an increase in work load or by an employee being absent from work and not replaced, shall first be assigned to the senior qualified employee in that job classification in such office, shed, work location and shift where such overtime is required who has signified a desire to work overtime pursuant to paragraph (3) of this Clause (b); however, if overtime work "remains to be assigned, the junior available qualified employee in that job classification in such office, shed, work location and shift , will be required to work the overtime.

(2) Work which is required to be performed at overtime rates and which is brought about by an employee being absent and the Company requiring a replacement, shall first be assigned to the senior qualified employee in that job classification in such office, shed or work location, where such overtime is required who has signified a desire to work overtime pursuant to paragraph (3) of this Clause (b); however, if overtime work remains to be assigned, the junior available qualified employee in that job classification in such office, shed or work location will be required to work the overtime.

(3) Employees who wish to work overtime shall so signify in writing and a list will be prepared with a copy to the Local Chairman. Except in extenuating circumstances, these employees will be required to work the overtime when so assigned. An employee whose name is on the list and who no longer wishes to work overtime may have his name removed from the list upon serving three days' written notice. An employee whose name is not on the list and who wishes to work overtime shall have his name placed on the list upon serving two weeks' written notice.

NOTE: The provisions of Clauses (a) and (b) above shall apply to the extent they are consistent with the Canada Labour Code.

It had been observed in **Case No. 252** (dealing with a collective agreement involving different parties), that there was no provision dealing with the distribution of overtime. The collective agreement in the instant case does deal with that matter, and it does so in the way set out in the above provisions.

The instant case involves work performed in the position of Clerk (Car Control) 0001-0800, in the Winnipeg Customer Service Centre. That was a Wednesday through Sunday position. The regular incumbent was a Ms. C. Saxon. Beginning July 31, 1978, Ms. Saxon performed vacation relief on other clerical positions in the Customer Service Centre. Her regular position was then filled by spare (unassigned) employees. The collective agreement, in Article 1, defines an unassigned employee as one who reports for duty only as required or notified due to work being irregular, and in the same article defines "temporary assignment" as contemplating "the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee ...".

During the period from August 30 to September 15, the duties of Ms. Saxon's position were filled by a Mr. D. Zinger, on a temporary basis. Mr. Zinger was a spare (unassigned) employee. On September 16, the day in question, Mr. Zinger was absent, and Mr. Stewart, another spare (unassigned) employee, was assigned to do the work. It was not performed by Mr. Stewart on an overtime basis, nor it seems had it been performed on an overtime basis by any of those who replaced Ms. Saxon. The Company did not require the work to be performed at overtime rates, but simply made a series of assignments on a temporary basis in order to cover the position in the absence of the

regularly assigned employee. Had the work been performed on an overtime basis, it is acknowledged that the grievor would have been entitled to such overtime work.

Since, as has been set out, the work was not "required to be performed at overtime rates", Article 9.10 does not apply. The thrust of the grievance, it seems, is that the Company ought not to have covered the vacancy in the regular position by assigning spare employees on a temporary basis at straight-time rates, but should have required it to be covered by other employees working overtime. I was not referred to any provision in the collective agreement that would impose that obligation on the Company, requiring the regular work of an assignment to be performed on overtime where the regular employee happens to be absent. Such a provision would, of course, deprive some employees of what would otherwise be their regular straight-time work, so that others may work overtime. Article 9.10, it may be said, is not designed to create overtime, but rather deals with its distribution, where it is required to be worked.

In the instant case overtime was not required, and the grievor was not entitled to the work. Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR