

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 791

Heard at Montreal, Tuesday, November 11, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim of Operator V.K. Arnett for 15 minutes per day between August 31 and September 20 inclusive for time occupied on days worked in making transfers of train orders and other necessary information to the relieving Operator. Also claim for 20 minutes for September 21 and claim for actual time worked on a minute basis since that date, on days worked, for time occupied in making such transfers. All claims for time are at the punitive rate of pay.

JOINT STATEMENT OF ISSUE:

Paragraph 5 of Rule 220 of the Uniform Code of Operating Rules requires that "when an Operator is relieved he must make a transfer, in a book or on a form provided for the purpose, of all undelivered train orders and other necessary information".

Mr. Arnett submitted claims for making the transfers in accordance with provisions of Articles 11.1, 12.1, and 20.14, of the current agreement.

The Company has declined the claims.

FOR THE EMPLOYEE:

(SGD.) G. E. HLADY
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows	– System Labour Relations Officer, Montreal
R. A. Groome	– Labour Relations Assistant, Montreal
W. A. McLeish	– Labour Relations Assistant, Toronto
W. J. Behun	– Chief Train Dispatcher, MacMillan Yard, Toronto
W. J. Rupert	– System Rules Manager, Montreal

And on behalf of the Brotherhood:

G. E. Hlady	– System General Chairman, Barrie
F. E. Soucy	– General Chairman, General Secretary/Treasurer, Montreal
B. E. Woods	– District Chairman, Barrie
V. K. Arnett	– Grievor

AWARD OF THE ARBITRATOR

There is no doubt as to the requirement that an operator make a transfer of undelivered train orders and other necessary information. Time spent making a transfer is time worked, and if such time is spent in the course of a regular assignment, or in the course of authorized overtime, then of course it is to be paid for. And as Article 20.14 of the collective agreement makes clear, where two Telegraphers are required to work making a transfer, both are to be paid.

Eight consecutive hours constitute a days' work (Article 11.1), and where an employee is held on duty continuous with the completion of his assignment constituting a days' work, he is entitled to overtime payment on the actual minute basis (Article 12.1). The claim in the instant case is for payment on the minute basis for time spent making transfers following the completion of a regular days' work.

Such a claim may quite possibly be valid. There is no question that such work falls within the scope of an operator's duties, and is required under the Uniform Code of Operating Rules. It may be that because of the volume of work, an operator will be held on duty to make a transfer. It may be that he will do this together with the relieving operator, if there is one. Whether or not a claim for payment for such work is proper depends, like any other claim for overtime, on whether or not the work was authorized or required to be done at that time.

In the instant case the material before me does not establish that the grievor's performance of this work outside of the regular hours of his assignment was authorized or required. It is not – or at least it was not in these cases – necessary that the relieving operator be present when the grievor made the transfers in question. In many cases, an operator is not relieved, but simply leaves work, having completed any necessary transfers. In this respect, what is required of a telegrapher must be contrasted with what is required of a train dispatcher, who must transfer train orders directly to a relieving dispatcher, who must read them aloud and initial them in his presence. Indeed, the collective agreement expressly provides for an allowance to Train Dispatchers and Train Movement Directors in respect of such duties.

In the instant case, overtime was not authorized for the grievor, and it has not been shown that the volume of work required of him on the days in question was such as to establish any sort of implicit authorization for him to work beyond his regular hours. While he quite properly complied with the requirements of the Uniform Code, it has not been shown that it was necessary for him to work overtime to do that.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR