

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 803

Heard at Montreal, Tuesday, January 13, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim of Operator G. Marinier that he should have been called for overtime work instead of Operator J. Gignac.

JOINT STATEMENT OF ISSUE:

During July and August 1979, an Operator was frequently required to come on duty prior to the regular starting time of the Day Operator's shift at Ste. Thérèse, Quebec. The work was assigned to Mr. J. Gignac, the Day Operator, although he had not signified his desire for overtime work pursuant to Article 16.11.02. Second Operator Marinier claimed the overtime as he had signified that he was available for such work.

It is the contention of the Union that in not calling Mr. Marinier for the overtime work, the Company has violated Article 16.11.02 of the collective agreement.

It is the Company's contention that Article 16.11.02 does not apply and that the work in question was properly assigned to Operator Gignac.

FOR THE EMPLOYEE:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, O. & M.

There appeared on behalf of the Company:

J. Cuin – Supervisor, Labour Relations, Atlantic Region, Montreal
S. J. Samosinski – Labour Relations Officer, Montreal
R. H. Montpetit – Assistant Supervisor Labour Relations, Atlantic Region, Montreal

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal
J. G. Belhumeur – Local Chairman, Montreal
D. J. Duquette – Local Chairman, North Bay
D. H. Arnold – Representative, Calgary
G. Marinier – Grievor

AWARD OF THE ARBITRATOR

The matter of overtime assignment is dealt with in the several sub-clauses of Article 16.11. These clauses are to be read in the light of other provisions of Article 16, which deals generally with “overtime and calls”.

Article 16.11.01 deals with the rights of employees to be assigned overtime work “where it is necessary to fill a temporary vacancy or an extra position ... due to no employee available to work at *pro rata* rate”. Article 16.11.02 goes on to provide that “such overtime work” is to be divided as equally as possible among those regular employees who have signified their availability for it, and a second paragraph of Article 16.11.02 provides for the maintenance of a list of such employees, including provision for employees having their names removed from the list. The grievor, Mr. Marinier, had signified in writing his availability for overtime. Mr. Gignac, on the other hand, had had his name removed from the list.

At the material times Mr. Gignac was Day Operator at Ste. Thérèse. His regular hours were 0600 to 1400. On a number of occasions in July and August 1979, he was required to report to work early, and to work two hours, or two hours and fifteen minutes prior to his regular shift, and continuous with it. Mr. Gignac was, in any event, obliged to work this overtime by virtue of Article 16.11.06 (which cannot be restricted in its application to those cases covered by the immediately preceding Article 16.11.05. Article 16.11.06 appears to set out a general obligation).

The issue in this case does not relate to Mr. Gignac’s obligations (which he met), but rather to the Company’s obligation, if any, to call Mr. Marinier for this work. Mr. Marinier’s hours, at the material times, were from 1400 to 2200. Had he been called, he would have been entitled to call-in pay of three hours at overtime rates by virtue of Article 16.06.

Mr. Marinier, as has been noted, had indicated his availability for overtime work. The Company’s obligation to divide such work equally among the employees on the overtime list arises under Article 16.11.02. That Article, as I have noted, provides for the equal distribution of “such overtime work”. That is not a provision for equal division of all overtime, but refers only to that described in the immediately preceding Article 16.11.01. Both provisions are sub-clauses of Article 16.11. The overtime to be divided in this way, then, is that which arises where temporary vacancies or extra positions are to be filled (and where this cannot be done on a straight-time basis). The whole tenor of Article 16.11 is consistent with this, the Article referring at various times to “positions”, “shifts” and “tours of duty”.

None of that was involved in this case. Mr. Gignac was simply required to work a certain amount of overtime related to his own regular tour of duty and continuous with it. He did not fill a temporary vacancy or an extra position. This was not the sort of overtime work contemplated by Article 16.11.01, and was, therefore, not the sort of work to which employees on the overtime list would have a claim under Article 16.11.02.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR