

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1061

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

During the period of January 16 to March 4, 1982, Mr. T. Haselbeck, trackman, was assigned working hours of 21.00K to 5.00K in Brandon Yard, with Thursday and Friday as rest days. The regular Track crew, located at Brandon Yard, had working hours of 08.00K to 12.00K and 13.00K to 17.00K with Saturday, Sunday as rest days.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.)** The Company violated Sections 2.1, 2.2 and 2.3, when it assigned the hours of 21.00K to 5.00K to T. Haselbeck. **2.)** The Company violated Sections 4.1, 5.1, 8.6 and 8.7, when it assigned rest days of Thursday and Friday. **3.)** The Company violated Sections 8.5, 8.7 and 9.1, when no overtime was paid for working 21.00K to 5.00K and working on Saturday and Sunday. **4.)** The Union contends that all hours worked by T. Haselbeck during the claim period be paid at overtime rate of pay instead of regular rate of pay. January 16 to March 4, 1982, inclusive.

The Company denies the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

R. D. Falzarano – Assistant Supervisor, Labour Relations, Winnipeg
F. B. Reynolds – Supervisor, Labour Relations, Winnipeg
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
F. L. Stoppler – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The regular trackmen at Brandon (there are 13 of them), work, as their regular hours, from 0800 to 1700, with Saturday and Sunday as rest days. This schedule would appear to include time for a one hour unpaid lunch period. Due to severe winter weather at Brandon, it was decided (apparently this was the first time such a decision had been made), to assign a trackman to work nights to help keep switches clear. The switching is performed on a 24-hour basis, the trackman accompanying the yard assignment.

The position was a temporary one, although it appears to have continued slightly beyond the 45 days contemplated by article 14.4 (a). Whether or not the job ought to have been bulletined after the 45th day or at some other point, is not in issue in this case. The grievor, who was laid off when the work became available, was the senior laid-off trackman "B" immediately available, and in my view was properly assigned to the job.

Articles 2.1, 2.2 and 2.3 of the collective agreement are as follows:

21. Eight consecutive hours, exclusive of meal period (which shall be one hour unless otherwise mutually arranged) shall, except as otherwise provided, constitute a day's work.
- 2.2 Regular day shifts shall start at or between 6:00 a.m. and 8:00 a.m.
- 2.3 Notwithstanding the provisions of Clause 2.2, the starting time for employees not living in boarding cars or other mobile units may be established or changed to meet the requirements of the service. When the starting time is to be changed, forty-eight hours advance notice will be given to the employees affected and, where practicable, the notice will be posted promptly in a place accessible to such employees. The appropriate Local Chairman and the General Chairman shall be advised of any change in starting time.

As to article 2.1, it would appear that the grievor's schedule was advantageous to him. Instead of going on duty at 2100 and off duty at 0600 – taking an hour for an unpaid meal period, he was able to take a meal on paid times and go off duty at 0500. It may be that a timely demand in that respect would have had to be accommodated, but it does not appear that any was made. In the circumstances I do not consider that article 2.1 was violated, and in any event there is no relief to which the grievor would now be entitled.

Article 2.2 refers to the hours of "regular day shifts". The grievor's was not such a shift, and this article has no application.

As to article 2.3, this was not a case of change of starting time. The position was a new one. The article has no application in this case.

Articles 4.1, 5.1, 8.6 and 8.7 are as follows:

4.1 The work week for all employees covered by this agreement, unless otherwise excepted herein shall be forty hours consisting of five days of eight hours each, with two consecutive rest days in each seven, subject to the following modifications: the work week may be staggered in accordance with the Railways' operational requirements. This clause shall not be construed to create a guarantee of any number of hours or days of work not provided for elsewhere in this agreement. (See Clause 8.6 for definition of work week).

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.

8.6 The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for laid-off or unassigned employees shall mean a period of seven consecutive days starting with Monday.

8.7 Employees shall not be required to suspend work in regular working hours to equalize overtime.

As to article 4.1, the grievor's work week complied with the requirements of that article. He worked five days of eight hours each, and had two consecutive rest days in seven.

As to article 5.1, the grievor's rest days were consecutive. They were not Saturday and Sunday, nor Sunday and Monday. While "preference is to be given to those days, there is no absolute requirement that those be rest days. In the instant case, the railway has shown that, due to the weather conditions existing at the particular place and time, the grievor's schedule was one which was necessary to meet operational requirements.

As to article 8.6, the grievor was not a regularly assigned employee and the article has no application in this case. It would not appear to have been violated in any event.

As to article 8.7, there is no evidence that the grievor was required to suspend work in his normal hours to equalize overtime.

Article 9.1 is as follows:

9.1 Employees required to work on regularly assigned rest days, except when these are being accumulated under Clause 5.2, shall be paid at the rate of time and one-half.

As to article 9.1, it appears that when, during the period in question, the grievor was required to work on a rest day (that is, a Thursday or Friday), he was paid at time and one-half. He would not be entitled to payment at that rate for work on Saturday or Sunday, because those were not his rest days.

In summary, there was no violation of any of the collective agreement provisions referred to. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR