

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1175

Heard at Montreal, Tuesday, January 10, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On a continuous overtime basis, from 1030 hours on January 16, 1983, until 0600 on January 17, the Company employed Mr. M. Pilon as Track Maintenance Foreman instead of the regular Track Maintenance Foreman, Mr. N. Cianci.

JOINT STATEMENT OF ISSUE:

The Union contends that: **(1.)** The Company violated Section 7.1 of Wage Agreement 41 when N. Cianci was not called. **(2.)** N. Cianci be paid 13 hours for January 16 and 6 hours for January 17 at his overtime rate of pay.

The Company denies the Union's contention that: **(1.)** Section 7.1 of Wage Agreement 41 was violated, **(2.)** Mr. N. Cianci was not called, and declines the payment.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) J. L. Fortin

System Federation General Chairman General Manger, Operation & Maintenance

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, Montreal

J. H. Blotsky – Assistant Supervisor, Labour Relations, Montreal

R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

R. Gaudreau – Vice-President, Ottawa

G. Valence – General Chairman, Sherbrooke

E. J. Smith – General Chairman, London

L. DiMassimo – Federation General Chairman, Montreal

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AWARD OF THE ARBITRATOR

On the morning of January 16, 1983 a severe snow storm in the Montreal area beset the St. Luc Yard. Difficulties were encountered in the

movement of traffic at the yard because of the accumulation of snow. At 10:00 hrs. Mr. J. G. Lapierre, Assistant Roadmaster, concluded that the situation warranted calling in additional employees on overtime to combat the storm.

Mr. Cianci is the Track Maintenance Foreman of the Section 18 Gang that regularly works at the St. Luc Yard. Mr. Lapierre telephoned Mr. Cianci at his home on four occasions at 1000, 1015, 1030 and 1040 hours on January 16, 1983 to report for work for the purpose of supervising his gang in the clearing of snow. Finally Mr. M. Pilon, the grievor's assistant, was called in his stead. There is no dispute that the grievor was attending mass between the hours of 1000 and 1115 hours that morning. He was therefore unavailable to answer the telephone calls made by Mr. Lapierre.

The Trade Union claims that the grievor ought to be paid at the overtime rate for the nineteen hour period that work was performed by Mr. Pilon as foreman supervising the Section 18 Gang's efforts to clear the snow at the St. Luc Yard.

The relevant provisions of the collective agreement reads as follows:

7.1 Where work is required by the railways to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other cases by the regular employee.

Subject to the provisions of Section 7.1 of Wage Agreement No. 41 where track work is required on a rest day, preference shall be given to employees regularly working on that track section to perform such work, wherever it is reasonably practicable, before calling men from an adjoining track section.

I am satisfied that the Company did what was reasonable in the circumstances to contact the grievor for purposes of calling him to perform the overtime work. He simply was not available to answer the telephone calls that were made because he was not at home. The Company had no way of knowing where the grievor was and when he intended to return to his home. It was therefore not "reasonably practicable" for the Company to extend Mr. Cianci the "preference" he would otherwise have been entitled to under Article 7.1 of the collective agreement.

Moreover, once a reasonable effort was made to contact the grievor I can discern no further obligation under the collective agreement on the Company's part to continue indefinitely its attempts. Mr. Lapierre had other employees to contact and additional responsibility to discharge during the course of that day. He was not obliged to be preoccupied exclusively with contacting the grievor.

For the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES

ARBITRATOR