# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 1251

Heard at Montreal, Wednesday, June 13, 1984

Concerning

## CN MARINE INC.

and

## CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

### DISPUTE:

Claim of Messrs. J. E. Milligan and G. S. Nicholson, Electrical Engineers (Radar), for payment of 1 1/2 hours each on 14 November 1983, at punitive rates.

### JOINT STATEMENT OF ISSUE:

On 14 November 1983 Messrs. Milligan and Nicholson were required to work 1-1/2 hours beyond their normal quitting time of 1600 hours.

The Brotherhood claims entitlement to punitive rates for the 1-1/2 hours based on article 31.1 of Agreement 5.57.

The Company disputes the claim on the basis of article 40 of Agreement 5.57 providing that overtime worked in this situation would be accumulated over a 12-week period and only when 57.9 hours is exceeded would punitive rates be paid.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
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| (SGD.) W. C. VANCE | (SGD.) G. J. JAMES |
| REGIONAL VICE-PRESIDENT | DIRECTOR INDUSTRIAL RELATIONS |

There appeared on behalf of the Company:

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| N. B. Price | – Manager Labour Relations, Moncton |
| L. H. Wilson | – Labour Relations Assistant, Moncton |
| Capt. D. G. Graham | – Marine Superintendent, Borden |
| B. W. MacDonald | – Senior Chief Engineer, M.V. "John Hamilton Gray", Borden |

And on behalf of the Brotherhood:

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| G. T. Murray | – Representative, Moncton |
| T. McGrath | – National Vice-President, Ottawa |
| G. Nicholson | – Grievor |

# AWARD OF THE ARBITRATOR

On Monday, November 14, 1983, the grievors, J. E. Milligan. and G. S. Nicholson, Electrical Engineers (Radar) were required to work 1.5 hours beyond their regular quitting time at 1600 hrs. They claim that their entitlement for payment for the overtime hours worked should be governed by article 31.1 of Agreement 5.57 which reads as follows:

> Except as provided in articles 31.2, 31.3 and 31.4, time worked by an employee on his regular assignment continuous with, before or after the regularly assigned hours of duty, shall be considered as overtime and shall be paid at one and one-half times the hourly rate of pay in minimum increments of 15 minutes.

The Employer alleges that at the material time the grievors were required to work beyond their quitting time they were required to perform "emergency" work. Accordingly it was submitted that the grievors' rate of pay for the extra hours worked should be governed, because they were on standby, by article 40.1 of Agreement 5.57 which reads as follows:

> In order to provide standby protection, employees assigned as Electrical Engineers (Radar) may be paid on the basis of 179.3 hours per four-week period, as follows:
>
> 160.0 hours at the hourly rate
> 19.3 hours at one and one-half times the hourly rate 179.3

The parties are agreed that the hours worked by the grievors on Monday, November 14, 1983, beyond their normal quitting time was the first day of their regular work week. In this regard, article 40.4 defines an employees' work schedule for purposes of "standby protection", as follows:

> Employees covered by this article shall be assigned to work 5 days per week. The sixth day shall be considered as a standby or call day and the employees must be available for call for work of an emergency nature. The seventh day, which shall be Saturday or Sunday, if possible, shall be their regular assigned rest day. Service on the regularly assigned rest day shall be governed by article 31, "Overtime and Calls" and hours paid for on such regularly assigned rest day shall not be included in computing the 179.3 hours per 4-week period.

As the Trade Union argued, the plain, clear and unambiguous language of the collective agreement defines "the sixth" day of an employee's work week to be the day when "he shall be considered as a standby or call day". Nowhere in the language of the collective agreement can it be demonstrated that on each occasion, whatever the day of the work week, an employee is required to work overtime on an emergency basis he is appropriately characterized as being "on standby". Rather, article 40.4 restricts the "sixth" day of the work week as the day where the rates of pay provided for standby protection under article 40.1 are to apply.

It may very well be that the provisions of the collective agreement do not conform to the parties' understanding as reflected in the Employer's documentary evidence. In this regard, the Employer claims that the entire work week, particularly Saturdays and Sundays were contemplated as standby protection days. I am prevented, however, from applying such extrinsic evidence as an aid to the interpretation of the collective agreement unless an ambiguity is established. In my view, obviously, no such ambiguity exists.

Accordingly, article 31.1 of the collective agreement governed the rate of pay to which the grievors were entitled for the 1.5 hours worked beyond their normal quitting time on Monday, November 14, 1983. The grievance is successful and I shall remain seized for the purpose of implementation.

**(signed) DAVID H. KATES**
**ARBITRATOR**