

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1267

Heard at Montreal, Thursday, July 12, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. H. Wood, B&B Foreman, Revelstoke Division, was debited with 30 demerits for deliberately submitting false overtime claims for time not worked August 2, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) Mr. Wood did not deliberately submit false overtime claim and was due to excessive hours worked during that period August 2 – 4, 1983. (2.) The 30 demerits be removed from his record.

The Company declines the Union's contention:

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

D. N. McFarlane – Assistant Supervisor, Labour Relations, Vancouver
F. R. Shreenan – Supervisor, Labour Relations, Vancouver
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
L. DiMassimo – Federation General Chairman, Montreal
R. Y. Gaudreau – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The grievor is a Bridge and Building Foreman whose responsibilities with respect to his five-member gang included the recording of their timekeeping. On August 2, 1983, the grievor, after he had completed his regular eight hour shift, was contacted at approximately 2100 hours with respect to his requirement to report along with his crew for work to attend an emergency condition occasioned by a "washout" at mileage 90.3 Revelstoke Division. On August 4, 1983, the grievor submitted a request for overtime payment for the hours worked on August 2, 1983, with respect to the emergency circumstances. The grievor also prepared the overtime sheets with respect to the appropriate overtime payment of his gang's entitlement.

The only issue raised in this case is whether, of the six hours claimed as overtime for the hours worked on August 2, 1983, the grievor deliberately submitted a false claim with respect to three of them.

What obviously triggered the Company's suspicion that the grievor falsified his claim was the notation on his time sheet indicating he commenced the overtime hours worked at 1600 hours. The grievor acknowledged his obvious mistake in alleging that he commenced overtime at that hour as his claim was for only six hours overtime which is shown to have terminated at 2400 hours. Accordingly, he corrected the mistaken impression by indicating to his Superiors that he commenced the overtime work at 1800 hours. This "clarification" however, did not succeed in removing the Company's suspicions as to the alleged irregularity. It was clearly established that the grievor could not have commenced his overtime work until sometime after he had been contacted for the purpose of reporting for work some time between 2030 hours and 2100 hours that evening.

The grievor thereupon explained that he had also included in his overtime claim two one-half hour periods he had worked through his lunch hour on August 1 and 2, 1983. Once having made this assertion the Company still required the grievor to account for the other two hours for which overtime was claimed that evening. Incidentally, it was pointed out that the grievor clearly violated the appropriate timekeeping procedures, if his explanation was true, for claiming overtime payment for hours worked on a day other than the day for which the claim was made.

The Company's case that the grievor deliberately falsified his overtime claim is based on circumstantial evidence. The grievor plainly could not account for all of the six hours claimed as overtime and appeared caught in several contradictions in his attempts to provide an explanation for his irregularity. In a last resort, his Trade Union relied upon the explanation that the grievor was simply a poor bookkeeper which, when considered in the light of his fatigue from excessive overtime hours worked, would account for his "mistaken" claim.

As discussed at the hearing the one factor that betrays the Trade Union's explanation is the evidence that the grievor was perfectly accurate in recording the overtime claims of the members of his gang. If his mediocre timekeeping abilities were aggravated by the long hours he had worked then it is curious that like inaccuracies did not emerge in the documents he submitted on their behalf. Indeed, the sheer coincidence of the mistake committed on the grievor's own time sheet in an amount that was in his favour by reason of his fatigue is simply too incredible an explanation. Indeed, his efforts to "cover up" his deliberate wrongdoing was demonstrated in the excuses he advanced in accounting for the deficiencies in his overtime claim. That is to say, I am satisfied that the grievor's inaccurate claim was false and deliberately so and simply cannot be attributed in a facile manner to a mistake. For that reason the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR