

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1337

Heard at Montreal, Tuesday, March 5, 1985

Concerning

ONTARIO NORTHLAND RAILWAY

and

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

DISPUTE:

Claims of Agent/Operators I. B. Horsman and S. C. Ruttan in connection with overtime calls July 6, 1984.

JOINT STATEMENT OF ISSUE:

On July 6, 1984 Agent/Operator Horsman was contacted at 0510 and advised to report for duty at 0600. His regular starting time was 0700, so that, in effect, he worked one hour's overtime.

Agent/Operator Ruttan was contacted at 0500 and advised to report for duty at 0530. His regular starting time was 0630, so that, in effect, he worked one hour's overtime.

Both employees were paid one hour's overtime at time and one-half under Article 8.4.

The employees claim that the overtime payment should have commenced at the time the call was made to them and that they should have been compensated in accordance with Article 8.5. The company does not agree.

FOR THE BROTHERHOOD:

(SGD.) S. C. RUTTAN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. DYMENT
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay
W. R. Deacon – Trainmaster & Rule Instructor, North Bay

And on behalf of the Brotherhood:

S. C. Ruttan – General Chairman, Porquis

AWARD OF THE ARBITRATOR

The grievors' request for the overtime premium of 3 hours' pay at the overtime rate for the one hour worked prior to their regularly authorized starting time is in essence a request for a benefit that does not exist under the collective agreement. The grievors' claim made under Article 8.5 is in truth a request for being called into work to deal with an emergency situation where they were not otherwise scheduled to work the overtime.

Obviously, the company is quite accurate when it states that Article 8.5 does not apply because the call to perform work was not "... not continuous with, before or after regularly assigned hours of duty ...". Indeed, the admitted facts indicate that the calls in question pertained to one hour's overtime work that was "before" the grievors' regularly assigned hours.

Nor does Article 8.4 apply to the grievors' situation. Article 8.4 simply rewards an employee one hour's pay at the overtime rate where he is called into work "within one hour before his regularly assigned starting time". That is to say, if an employee is called in to perform overtime work 30 minutes before his regular starting time that employee would be entitled to the full hour's pay at the premium rate. In this case, the grievors concede that they were called in to perform overtime outside the one hour period before the start of their shift.

Quite clearly, the only provision of the collective agreement that applies to the grievors' situation is Article 8.1. Article 8.1 ensures that an employee will be paid at the overtime rate "in excess of eight hours service". And, in this regard, the company has already paid the grievors for the one hour worked before the start of their regular shifts at the rate of time and one-half. Accordingly, the company has complied with its obligations under the collective agreement.

Because there is no provision in the collective agreement that deals directly with the grievors' complaint, their grievance must be dismissed.

(signed) DAVID H. KATES
ARBITRATOR