

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1415

Heard at Montreal, Wednesday, October 9, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

On May 5, 1984, Section 1, Calgary was required to work overtime. Two Group 3 Operators were used from Section 1. Mr. Daruba, normally assigned Unit 4713-66 was used to operate Unit 4713-47 normally operated by Mr. Salter. The Union claims 10 hours at the overtime rate of pay for Mr. Salter.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that: (1.) The Company violated Section 7.1, Understanding No. 2, in assigning Mr. Daruba to the overtime for unit 4713-47, normally assigned to and worked by Mr. Salter during regular hours. (2.) The position awarded to Mr. Daruba by bulletin was Unit 4713-47, which is a Group 2 rate of pay. (3.) Mr. Salter be paid overtime at the Group 3 rate of pay for 10 hours May 5, 1984, account his normally assigned position was worked by Mr. Daruba.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

F. R. Shreenam – Supervisor, Labour Relations, Vancouver
R. A. Colquhoun – Labour Relations Officers, Montreal
R. T. Bay – Assistant Supervisor, Labour Relations, Vancouver

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

Article 7.1 of the collective agreement provides:

WORK ON UNASSIGNED DAYS.

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.

On Sunday, May 5, 1984, some employees assigned to Calgary No. 1 Section were required to perform track work on an overtime basis. Two Group 3 Operators were used. The grievor was a Group 3 Operator who was not called in to perform overtime work. Mr. Daruba, a more senior employee, was called in and was assigned to operate Unite 4713-47. That Unit during the regular work week is "normally" operated by the grievor.

Accordingly, it was argued by the Trade Union that because the grievor was the Group 3 Operator who normally operated Unite 4713-47 he was "the regular employee" who should have been called in to do the overtime work.

In my view it is not the machine that is regularly assigned an employee that governs his or her entitlement to overtime under Article 7.1. Rather, what governs an overtime assignment is whether the employee is a "regular employee". Since Mr. Daruba is a regular employee, who happened to be more senior in service than the grievor, I cannot discern why the Trade Union has reason for complaint. But of more significance, I am not satisfied that the Employer abused its discretion under Article 7.1 in its failing to assign the grievor the overtime work.

For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR