

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1438

Heard at Montreal, Thursday, November 14, 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

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

DISPUTE:

Concerns claim for unpaid wages of an overtime nature in the name of Mr. T. Bate for three hours at time and one half while attending a Company directed investigation and for the removal of ten demerit marks.

JOINT STATEMENT OF ISSUE:

November 26, 1984, Mr. T. Bate was instructed to attend an investigation at 09:00 a.m., he attended this Q&A which lasted some three hours, 09:00 to 12:00 noon.

The Company's position is that Mr. T. Bate did not perform his duties in an acceptable fashion in dropping trailers and that the demerits would not be removed.

The Union's position is that employee T. Bate was directed by a Company officer to report for an investigation outside of and beyond the hours of his regular assignment which is considered as work and he is entitled to three hours at the applicable overtime rate and for the removal of ten demerit marks for alleged dropping trailers too low in the terminal yard November 22, 1984.

That T. Bate was under the control and direction of a Company officer for three hours, November 26, 1984, that he be paid three hours at the overtime rate and that the ten demerit marks be removed.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Willowdale

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw

M. Flynn – Vice-General Chairman, Vancouver

J. Bechtel – Vice-General Chairman, Toronto

J. Marr – Special Representative, Saint John

AWARD OF THE ARBITRATOR

This is a request for payment at the punitive rate for the period of time taken up for a Q&A investigation that occurred outside the grievor's normal shift.

In that regard I refer to my ruling made in **CROA 1422** which reads as follows:

Insofar as the Trade Union's request is concerned that the grievor be paid the overtime rate for the period of time (90 minutes) he spent at the investigation interview outside working hours, I simply rely on the precedent in *CROA 220*. In that decision it was noted that, in the absence of a provision in the collective agreement that specifically provides for overtime pay for the period during non-scheduled hours spent at an investigation, an employee has no claim for payment of any such premium.

Insofar as the Trade Union seeks to rely on my ruling in **CROA 1213** is concerned, I am compelled to hold that that case was decided on entirely different grounds than what was advanced in the Trade Union's brief. In **CROA 1213**, the grievance was sustained because of the Company's breach of a mandatory time limit in responding to the grievor's grievance. In no manner was it intended that that case stand for the principle that an employee, in the absence of express language, is entitled to the overtime premium for a Q&A held outside his regular shift.

Accordingly, this grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR