

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1471

Heard at Montreal, Wednesday, February 12, 1986

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

On Sunday, March 3rd, 1985, Roadmaster M. Richter telephoned the grievor, Mr. W. Falk, advising him to be at Gleichen, Alberta at 0830, March 4th, 1985. Mr. Falk claims he should be paid three hours overtime for receiving this call.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that: (1.) Mr. W. Falk was off duty at the time he was called and should be paid three hours at the overtime rate for his position. (2.) The Company violated Section 8.5, Wage Agreement 41 by refusing payment. (3.) Mr. W. Falk be paid the minimum three hours call at overtime rates of pay as required by Section 8.5 Wage Agreement 41.

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

#### **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:

R. T. Bay – Assistant 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. M. DiMassimo – Federation General Chairman, Montreal  
R. Y. Gaudreau – Vice-President, Ottawa

## **AWARD OF THE ARBITRATOR**

Section 8.5 of Agreement 41 provides as follows:

**8.5** An employee called in case of emergency or a temporary urgency outside of his regularly assigned hours, after having been relieved, shall be paid a minimum of three hours at overtime rates for which three hours of service may be required, but for such minimum shall not be required to perform work other than that of the emergency, and possibly another emergency which might arise subsequent to time of call. If, however, employees are called to commence work less than two hours before regular starting time, the time will be computed continuously with the regular day's work, and the time before the regular starting time shall be paid for at the rate of time and one half on the minute basis.

The object of Section 8.5 is to guarantee a minimum of three hours' pay at the overtime rate where an employee, in case of an emergency or a temporary urgency outside his regularly assigned hours, is called back to work after he has been relieved. In other words, in such situations, an employee is entitled to a minimum of three hours' pay at the punitive rate even though he may have worked something less than three hours. This guarantee is obviously extended to the employee because of the disruption that has been caused to his private life by the emergent situation.

In the circumstances described herein Mr. Falk's Supervisor called the grievor by telephone on the Sunday rest day in order to advise him of the requirement to report to work at the normal starting time on his regular Monday shift so that he might attend an interview with an Auditor. The conversation lasted no more than a minute. Although the subject matter of the telephone conversation was work related the grievor at no time was required to report to work on an emergent basis. In other words, the Trade Union has requested three hours' pay at the punitive rate for a one minute telephone conversation on the grievor's day off.

There is no merit to that claim. The grievor was not required in an emergent or temporarily urgent circumstance to report for work. And, because he was not required to report for work in such a circumstance, the minimum guarantee under Article 8.5 of Agreement 41 was not applicable.

As the Company suggested the supervisor's "occupation" of one minute of the grievor's rest day, albeit work-related, constituted a trivial interruption that would not warrant payment of the guarantee.

For all the foregoing reasons the grievance is denied.

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