

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1598

Heard at Montreal, Thursday, December 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

That the Company was in violation of article 7.2.17 of the Agreement when they failed to re-bulletin the position of junior employee, V. Godler. The Company changed the starting and finishing time of this employee's bulletin; which resulted in an overtime claim under articles 13.8 and 13.9 of the Agreement from senior employee, C. Weiringa. The Company declined to pay the claim and did not re-bulletin the position in question.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood's position is that the Company violated article 7.2.17 by moving the regular bulletin hours of junior employee, V. Godler. This exceeded the one hour limitation of the aforementioned article. Also, that senior employee, C. Weiringa was entitled to the overtime hours worked by this junior employee in line with articles 13.8 and 13.9.

The Company to date has declined the overtime claim and further, has maintained that they were not in violation of article 7.2.17.

The Brotherhood requests that the position in question be properly re-bulletined and that the overtime claim succeed.

FOR THE BROTHERHOOD:

(SGD.) MICHAEL W. FLYNN

FOR: SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

B. Weinert – Manager Labour Relations, Toronto
D. Bennett – Human Resources Officer, Toronto

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
M. Gauthier – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The first issue is whether the Company violated article 7.2.17 by failing to bulletin the assignment given to junior driver V. Godler. The material establishes that the assignment involved, in part, doing the Fraser Valley run for a temporary period, in replacement of driver Shane Thompson. It is not disputed that the assignment was for a period of six days. Article 7.2.1 of the collective agreement provides as follows:

7.2.1 Except as otherwise provided in article 7.2.18, new positions and temporary or permanent vacancies (except temporary vacancies of expected duration of 14 calendar days or less and annual vacation will be promptly bulletined for a period of 7 calendar days to the local seniority group concerned, and will be awarded in accordance with article 7.1.1.

In the Arbitrator's view the circumstances disclose the filling of a temporary vacancy for a period of less than fourteen calendar days, a circumstance in which the normal requirement to bulletin the position is waived. The case does not fall within the terms of article 7.2.17 which deals with a change in "the regular hours of a permanent position". On this issue the Arbitrator must therefore accept the position of the Company.

The second issue is whether the overtime worked by Mr. Godler should nevertheless have been offered to the grievor because of his seniority. Article 13.8 of the collective agreement provides, in part, as follows:

... Overtime shall be allocated on the basis of seniority wherever possible, in a voluntary manner within the work classification and shift, provided the employee is capable of performing the duties

...

In the instant case it is not suggested that the Company was unaware that on all of the dates in question the assignment given to Mr. Godler would involve a significant portion of overtime. The Company submits that it was not required to offer the overtime to Mr. Weiringa because he had never before done the Fraser Valley run, involving stops in Abbotsford and Chilliwack, while Mr. Godler had. In the Arbitrator's view these circumstances do not establish that the grievor was not "capable of performing the duties" within the meaning of article 13.8 of the collective agreement. There is nothing in the material to suggest that the grievor could not have followed the necessary instructions to adequately perform the assignment given to the junior employee.

For these reasons the grievance must be allowed. Mr. Weiringa shall be compensated for the difference between the overtime worked by Mr. Godler and the lesser amount of overtime which he worked during the same period. I remain seized in this matter in the event of any dispute between the parties respecting the amount of compensation.

(signed) MICHEL G. PICHER
ARBITRATOR