

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1794

Heard at Montreal, Wednesday, June 15, 1988

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Overtime being allocated to junior employees when senior qualified employees were available.

JOINT STATEMENT OF ISSUE:

When overtime is required prior to the regular starting time, the Company is allocating this overtime to junior employees when senior employees returning to work from annual vacation are qualified and available, but are not offered this overtime.

The Brotherhood maintains these employees returning from annual vacation are entitled to this overtime providing they are senior and qualified, in accordance with Article 13 of the Collective Agreement.

The Brotherhood filed claims on behalf of the senior employees, claiming the hours of overtime worked by the junior employees.

The Company declined the claims maintaining that the employees are not available to perform the overtime.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. D. NEIL
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. F. Weinert – Labour Relations Officer, Toronto
D. Bennett – Labour Relations Officer, CanPar, Toronto

And on behalf of the Union:

J. J. Boyce – General Chairman, Toronto
J. Crabb – Secretary/Treasurer, Toronto

AWARD OF THE ARBITRATOR

Article 13.8 of the Collective Agreement reads, in part, as follows:

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

A similar provision is found in Article 13.9.

The sole issue is whether employees returning from vacation are entitled to exercise a right of first refusal in respect of overtime scheduled immediately prior to their first regular shift upon return from vacation.

Vacation is covered by Article 22 of the Collective Agreement. It is an elaborate provision, extending over some nine pages of the document. Vacation entitlements which exceed the minimum rights provided in the **Canada Labour Code** usually represent the gains of years of collective bargaining on the part of the union. Essential to the concept of the annual vacation is the right of an employee to be free from being recalled to work. That is specifically reflected in Article 22.13 of the Collective Agreement which provides as follows:

22.13 It should be definitely understood that, unless otherwise mutually agreed, an employee on vacation must not be recalled to duty.

In the Arbitrator's view it is implicit that the obligation to distribute overtime on the basis of seniority applies only to those employees who can reasonably be considered as available for work. As a general matter it is understood that an employee is on vacation from the time that he or she punches out following the last shift prior to the vacation until the same employee punches in on the first shift scheduled following their return from vacation. In the Arbitrator's view, absent clear language in the Collective Agreement to the contrary, such employees should not be viewed as "available" for overtime. Consequently, I cannot conclude that the obligation to allocate overtime on the basis of seniority contained in Article 13.8 and 13.9 was meant to apply to employees who have not yet returned from their vacation.

For these reasons the grievance must be dismissed.

June 16, 1988

(signed) MICHEL G. PICHER
ARBITRATOR