

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2133

Heard at Montreal, Tuesday, 9 April 1991

Concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION EX PARTE

DISPUTE:

Claim for payment of eight hours at punitive overtime rate for Mr. R. Daniels, Crew Clerk at Calgary.

UNION'S STATEMENT OF ISSUE:

On February 14, 1990, the incumbent of the position of Crew Clerk, 2300-0700, at the Alyth Yard Office was absent account illness. The Company officer on call authorized the Chief Clerk to call a replacement. Being unsuccessful with filling the position with unassigned employees, the Chief Clerk called qualified assigned employees to work at overtime rates. All employees within the classifications were called but Mr. R. Daniels was called at an incorrect phone number which resulted in no employee filling the vacancy.

Mr. R. Daniels submitted an overtime claim per Article 9 of the Collective Agreement as he was available for work.

The Company declined the claim.

FOR THE UNION:

(SGD.) D. DEVEAU
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. E. Webb	– Labour Relations Officer, Vancouver
M. E. Keiran	– Assistant Unit Manager, Labour Relations, Vancouver
D. David	– Labour Relations Officer, Montreal
R. A. Hamilton	– Personnel Manager, Finance & Accounting, Montreal

And on behalf of the Union:

D. Deveau	– System General Chairman, Calgary
C. Pinard	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator reveals that no overtime work was assigned to any employee by the Company on February 14, 1990. While it appears that the officers of the employer did violate the Collective Agreement by failing to contact the grievor at his correct telephone number, it cannot be shown that in the result he was deprived of anything. While it may be that, but for its mistake of fact, the Company's decision to subsequently make no assignment of overtime that day might have been otherwise, the Union can point to no provision of the Collective Agreement which requires the awarding of overtime to anyone in the circumstances which then obtained. While it would appear that if overtime had been given to another employee the grievor would have a better claim, and this grievance might succeed, in the circumstances disclosed it cannot.

For the foregoing reasons the grievance must be dismissed.

12 April 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR