

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2769

Heard in Montreal, Thursday, 12 September 1996

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim of Mr. N. McDuff for time and one-half for work performed on January 24 and 25, 1994.

JOINT STATEMENT OF ISSUE:

On Friday January 21, 1994 the Company requested that Mr. McDuff report to work on the 08:00 to 16:00 shift on Monday and Tuesday, January 25 and 26, 1994, to attend a seminar.

The Union claims that the Company violated articles 8.8 and 9.4 of the collective agreement.

The Union requested that Mr. McDuff be paid time and one-half for 16 hours for January 24 and 25, 1994.

The Company denies the claim.

FOR THE UNION:

(SGD.) R. PAGE
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) D. J. DAVID
FOR: GENERAL MANAGER, INTERMODAL SERVICES

There appeared on behalf of the Company:

- C. Graham – Labour Relations Officer, Calgary
- W. D. Campbell – Manager, Terminal Operations, Lachine
- D. Chevrière – Assistant Manager, Transportation Service Centre, Winnipeg

And on behalf of the Union:

- R. Pagé – Executive Vice-President, Montreal
- N. Lapointe – Assistant Vice-President, Montreal

AWARD OF THE ARBITRATOR
(translation)

This grievance cannot be allowed. It appears from the evidence that the Union's representative received a notice, while at work, concerning a training course which would take place on January 24 and 25, 1994. Article 8.8 of the collective agreement reads as follows:

8.8 Hours of service shall not be changed without thirty-six hours' notice, and every effort will be made to discuss any change first with the Local Representative.

The Union claims that Mr. McDuff is entitled to overtime, in accordance with article 9.4 of the collective agreement, because his hours of service were changed for the two days in question without the Company having first discussed the changes with the local representative. The Union's representative submits that the grievance must be resolved in accordance with the principles expressed in **CROA 462**.

In **CROA 462**, this Office dealt with an article found in another collective agreement, where the language is markedly different. It reads, in part, as follows:

The appropriate Local Chairman and the General Chairman shall be advised of any change in starting time.

The Arbitrator in that case concluded that the Company had failed in its absolute obligation to advise union officers of the change and the grievance was allowed.

In the instant case the obligation is not as absolute. It is sufficient that "every effort will be made" to have discussions with the Union. The evidence before the Arbitrator shows that the local representative, Mr. Robert Charbonneau, did receive a notice 36 hours before the change in the schedule. He then had every opportunity to pursue discussions with the Company on the subject if he wished. However, he did not ask for any discussion and the Company had no reason to believe that he objected to the proposed change.

In the circumstances, the Company did not violate the terms of article 8.8 of the collective agreement and the grievance must be dismissed.

September 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR