

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3053

Heard in Calgary, Thursday, 13, May 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim for 8 hours' lost wages at overtime rates by CanPar (Nanaimo) employee Bruce Sly.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance on August 24, 1998 regarding this matter. To date the Company has denied the Union's request to settle this matter.

The Union contends that Mr. Sly was senior, qualified and available to perform the transfer of vehicles between Canpar's Nanaimo and Burnaby terminals on or about August 15, 1998. The work was offered to a junior employee who was on annual vacation without first being offered to the grievor. The Union grieved that the Company had violated articles 8.6 and 13.15 of the collective agreement, and requested that the Company pay the grievor for his lost earnings.

The Company has denied the Union's request stating the work was outside the normal duties of a driver.

FOR THE UNION:

(SGD.) A. KANE
ASSISTANT DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Toronto
E. Donnelly	– Regional Manager, British Columbia
J. Zysstra	– Supervisor, Vancouver

And on behalf of the Union:

A. Kane	– Chief Steward, Western Canada, Vancouver
D. Neal	– President, Local 1976, Toronto
B. Plante	– Local Protective Chairman, Calgary

AWARD OF THE ARBITRATOR

The facts before the Arbitrator disclose that during the course of the regularly scheduled vacation of employee Dave Heinrichs, Mr. Heinrichs offered to take a five ton truck from Nanaimo to Vancouver on the ferry, to deposit it and to pick up a new 1998 model truck which he then returned to the Nanaimo Terminal via BC ferry. It appears that the opportunity to travel to Vancouver suited Mr. Heinrichs, as he was visiting with family at that location, and afforded him the advantage of avoiding paying the cost of the ferry, which was covered by the Company. It is common ground that no wages were paid to Mr. Heinrichs other than his normal vacation pay.

The Union brings a grievance on behalf of employee Bruce Sly claiming that the work in question, namely the transfer of the trucks, should have been made available to him during a weekend, on an overtime basis. Specifically, while the Joint Statement of Issue does not cite any article of the collective agreement, during the hearing it relied upon article 8.6 which provides as follows:

8.6 Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week. Overtime shall be allocated on the basis of seniority wherever possible, in a voluntary manner, within the classification and shifts, provided the employee is capable of performing the duties; however, upon reaching the bottom of the seniority list in that classification and shift, the junior employee(s) will be required, in reverse order, to work the overtime.

The Union's representative submits that the task of swapping trucks should have been assigned to Mr. Sly, who is senior to Mr. Heinrichs, and that in the circumstances there has been an improper denial of overtime to Mr. Sly.

The Arbitrator cannot sustain the grievance. Firstly, it is common ground that Mr. Heinrichs received no overtime payment, and did not in the circumstance perform any service for the Company on the basis of an assignment of overtime as contemplated in article 8.6. At best, what occurred was an *ex gratia* service performed by Mr. Heinrichs in a circumstance which, insofar as the Arbitrator can determine, would not be prohibited by any provision of the collective agreement.

Interestingly, a letter prepared by Mr. Heinrichs and filed in evidence indicates that the kind of favour which he performed is not uncommon at the Nanaimo terminal, and that Mr. Sly has himself been involved in such activities in the past. He writes, in part:

This was the same method that was used by Bruce Sly, Steve Ellis and myself in the early 90s, when we took (3) three (1977) nineteen seventy-seven trucks to Vancouver and brought back the (3) three (86) eighty-six units in service in Nanaimo now.

The Company (CanPar) paid for the ferry costs and we volunteered are (sic) time.

On the whole I cannot find on the material before me any violation of article 8.6 of the collective agreement. The grievance must therefore be dismissed.

May 14, 1999

(signed) MICHEL G. PICHER
ARBITRATOR