

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3147

Heard in Montreal, Wednesday, 11 October 2000

concerning

CANPAR

and

**TRANSPORTATION COMMUNICATIONS UNION
LOCAL 1976 STEELWORKERS**

DISPUTE:

On May 8, 2000, Kingston supervisor D. Woods performed scheduled duties when employee S. O'Connell was senior, available and qualified to perform this work.

JOINT STATEMENT OF ISSUE:

On May 8, 2000 supervisor D. Woods performed regularly scheduled duties by delivering shipments instead of calling Mr. O'Connell in on an overtime basis.

The Union argued that this was a violation of articles 8.5, 8.6, Appendix A and all other relevant articles and requests Mr. O'Connell be reimbursed for all hours worked at the applicable rate with a minimum 4 hour call claim. The Union further argued that Mr. Woods be instructed not to perform any future scheduled duties except those as stipulated in Appendix A.

The company denied the Union's request.

FOR THE UNION:

(SGD.) D. J. DUNSTER
STAFF REPRESENTATIVE

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Mississauga
R. Dupuis	– Regional Manager – Quebec, Lachine
R. Clark	– Supervisor, Ottawa

And on behalf of the Union:

D. J. Dunster	– Staff Representative, Ottawa
J. Schock	– LPC

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied, on the basis of the material filed, that on May 8, 2000 Kingston CanPar Supervisor D. Woods performed bargaining unit work, in the form of pick-ups and deliveries in the Kingston metropolitan area. He did so for a period in excess of three hours. It is also common ground that the grievor, Mr. O'Connell, was then on his regular assigned rest day, and would have been available to perform the work on an overtime basis. It appears that the availability of the grievor arose from the fact that employees at Kingston work on a basis of four ten-hour days, with varying assigned rest days, a circumstance which does not generally arise with respect to most of the Company's workforce, system wide.

The Union relies upon the language of Appendix A of the collective agreement which is a letter directed to CanPar supervisors from the Company's president, and reads as follows:

CanPar Transport Supervisors

The subject of CanPar Supervisors performing work normally done by members of the bargaining unit was discussed at the recently concluded negotiations.

Please be advised that your role as a Supervisor does not include the performance of these duties except in the case of emergency and for training purposes.

(signed) J. G. Cyopeck

The Company's representative notes that on many occasions supervisors have been utilized to perform short term assignments on a stop-gap basis, as for example when a bargaining unit employee calls in absent due to illness. The indication from the material filed, however, is that on those occasions the work performed is generally of a relatively limited stop-gap nature, often involving no more than one or two hours. The Union's representative submits that the Union recognizes that there may be some emergency situations which would not merit assigning work on an overtime basis, particularly where the tasks involved might involve no more than one or two hours of work. That, he submits, is the reason there have been few, if any, grievances based on the application of Appendix A. In the Union's submission, however, the volume of work performed on the occasion in question, coupled with the fact that the grievor was on his rest days and available for work, squarely calls into application the terms of the appendix. It may be added that the Union makes no claim that Appendix A would place the Company under an obligation to canvass employees who are on their scheduled vacation rather than rest days.

In the Arbitrator's view the grievance must be allowed. It appears to the Arbitrator that the Company would not offend the appendix where, as conceded by the Union, emergency replacement work involving no more than one or two hours arises. Where, however, as in the instant case the work exceeds two hours, and can be reasonably anticipated to do so, and in fact went beyond three hours, Appendix A does place upon the Company a contractual obligation to canvass employees who are on their rest days for the purposes of assigning the work as overtime in accordance with articles 8.5 and 8.6 of the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the grievor, Mr. Sean O'Connell, be compensated for four hours at time and one-half.

October 13, 2000

(signed) MICHEL G. PICHER
ARBITRATOR