

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3217

Heard in Calgary, Wednesday, 14 November 2001

concerning

CANPAR

and

**UNITED STEELWORKERS OF AMERICA
TRANSPORTATION COMMUNICATIONS LOCAL 1976**

DISPUTE:

Shift differential entitlement for Calgary employees R. Baron, R. Exner, T. Korobanik, D. Kostyniuk, H. McIntyre, M Penny, R. Tasima, A. Wynn and S. Young.

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above-mentioned matter on September 12, 2001. The Company denied the Union's grievance at Step 2 on October 18, 2001. The parties have been unable to resolve the to date.

The Union contends the grievors are entitled to be paid shift differential as per articles 17.3 and 17.4 of the collective agreement.

The Company contends that the grievors are not entitled to the shift differential and that they have not violated the collective agreement.

FOR THE UNION:

(SGD.) A. KANE
GOVERNING BOARD REPRESENTATIVE

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Mississauga
K. Greenfield	– Manager, Alberta
K. Bouchard	– Supervisor, Calgary

And on behalf of the Union:

A. Kane	– Governing Board Representative, Vancouver
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AWARD OF THE ARBITRATOR

The Union claims that the Company has violated the provisions of the collective agreement with respect to the payment of shift differential. Shift differential is provided for under article 17.3 of the collective agreement which reads as follows:

17.3 Employees accumulating seniority under the terms of this agreement, whose regularly assigned shifts commence between 1400 and 0559 hours shall received a shift differential of 40 cents per hour. Overtime shall not be calculated on the shift differential nor shall the shift differential be paid for absence from duty such as vacation, general holidays, etc. Warehouse A and B positions will not be paid the shift differential.

The original bulletined start time of the employees who are the subject of this grievance was 14:00 hours. They worked from that time until 22:30 hours. In June of 2001 the terminal's manager held a meeting and advised the employees, who are full-time dockpersons, and apparently one of whom is a warehouseman B, that their tour of duty would be adjusted by one hour, with the start time to be 13:00. They were also told at that time that they would no longer be entitled to shift differential. It is common ground that the change in starting time was implemented pursuant to the discretion of the Company as provided in article 5.2.12 which reads as follows:

5.2.12 Hours of a permanent position may only be changed without being re-bulletined for legitimate business reasons. The reason for any such change shall be provided, upon request, in writing to the employee affected and his Local Protective Chairman. When the hours of a permanent position are changed and effect the starting or ending time by more than one hour and/or the assigned rest days are altered, the position will be re-bulletined promptly, but only to the Local Seniority Group concerned.

The Union's position appears to be based on its view that there has been no change in start time by way of an official bulletin. On that basis its representative submits that the entitlement to shift differential should continue. In partial support of his argument the Union's spokesperson refers the Arbitrator to **CROA 2587** and **CROA 253**.

After an examination of those authorities the Arbitrator cannot sustain the position of the Union. They stand for the proposition that the Company cannot make incremental changes to the start time of an employee so as to exceed one hour from the time in the last posted bulletin for the assignment in question. On the basis of those cases, for example, the Company could not now move the start time of the employees who are the subject of this grievance by a further thirty minutes, without re-bulletining the positions. **CROA 2587** and **253** do not, however, stand for the proposition that the bulletin must be viewed as still operative for the purposes of entitlement to shift differential.

Shift differential is entirely dealt with under the separate provisions of article 17.3. The question which must be asked under that provision is whether the employees' "regularly assigned shifts" commence between 14:00 and 05:59 hours. If they do they are entitled to shift differential. If they do not, they do not so qualify. In the instant case there can be no dispute but that the regularly assigned shifts of the employees have, since June of 2001, commenced prior to 14:00 hours, and that they therefore can no longer be said to fall within the purview of article 17.3. The change which was implemented by the Company was within its prerogatives, was exercised for valid business reasons, and consistent with article 5.2.12 of the collective agreement. In all of these circumstances the Arbitrator can find no violation of the collective agreement and the grievance must be dismissed.

November 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR