

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3659

Heard in Calgary, Thursday, March 13, 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS, LOCAL 2004

DISPUTE:

Overtime claim of behalf of Foreman D. Lochhead.

JOINT STATEMENT OF ISSUE:

Mr. D. Lochhead was the Track Maintenance Foreman on the Section Headquartered at Ste. Anne on the Sprague Subdivision.

Over the four day period between May 30th and June 2nd, 2006, Track Maintainer / Boom Truck Driver Mr. Arden Ross of the Ste. Anne Section was assigned 19 hours overtime over the four days.

The Union filed an overtime claim grievance on behalf of Mr. Lochhead citing violations of articles 15.3, 15.4 and 15.7 of agreement 10.1.

The Union is seeking full redress for Mr. Lochhead including, but not limited to, all lost earnings, both regular and overtime as well as associated benefits.

The Company disagrees and has declined the Union's claim.

FOR THE UNION:

(SGD.) A. KANE
STAFF REPRESENTATIVE

FOR THE COMPANY

(SGD.) D. BRODIE
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Brodie – Manager, Labour Relations, Edmonton

And on behalf of the Union:

M. Piché – Staff Representative, Vancouver

AWARD OF THE ARBITRATOR

The main facts are not in dispute. An extended Province of Manitoba project at the Floodway Bridge at mileage 143.5 on the Sprague Subdivision required flagging protection. The Company initially established a temporary position to perform this work between late January and April 2006. The need for flagging protection diminished and the assignment was terminated for about a month. Later, a number of employees from the St. Anne section, including the grievor, were assigned to perform these flagging duties as required. Mr. Ross was assigned to these flagging duties for the four day period between May 30 and June 2, 2006. He received 19 hours of overtime in addition to his regular hours. The grievor was senior to Mr. Ross as a track maintenance foreman and the Union submits that he should have received the overtime opportunity during this period.

The Company maintains that the overtime work opportunities, including the work performed by Mr. Ross in this time frame, were distributed equally amongst employees on the Saint Anne section crews in accordance with the requirements of the collective agreement, and in particular article 8.8 which reads:

8.8 A record will be kept of overtime worked and regular employees will be called with the purpose in view of distributing overtime equally to the extent possible subject to the following conditions:

- (a) An employee is already engaged in the work for which overtime is required;
- (b) An employee has the qualifications required to perform the overtime work;
- (c) An employee on duty is immediately available for the overtime work to be performed.

In a case where an employee has missed an overtime opportunity the Unit Chairperson and the appropriate Company Officer will meet in order to arrange for the employee to make up the lost overtime opportunity.

The Union's main concern is that the Company has been unable to produce a tracking record of overtime allocated to the various employees in the section. There is no evidence, in that regard, of a list of overtime assigned or overtime opportunities that were refused by the eligible employees. The Union pointed to **SHP 506** where the Arbitrator indicated that employees on an overtime equalization board who refuse overtime shall have their total hours adjusted to reflect those hours. Similarly, the Union argues that there is no way of determining how many overtime hours were refused by the various employees in the section. That in turn leaves the Union in a position that it is unable to determine whether the overtime hours have been fairly allocated in circumstances like the present case.

I agree with the Employer that the disputed overtime work flowed from the flagging assignment and is therefore captured within the provisions of article 8.8. Although it would have been relevant to consider any overtime refused by the affected employees, the Employer, for all practical purposes, adhered to the spirit and intent of equalization of work set out in article 8.8 by only tracking the previous overtime worked by each employee. The grievor, in that regard, had a total of 149 hours for the first half of 2006 while Mr. Ross' hours stood at 122. There is no evidence to indicate that the above calculations are inaccurate or based on improper overtime tracking information.

For all the above reasons, the grievance is dismissed.

March 24, 2008

(signed) JOHN M. MOREAU, Q.C.
ARBITRATOR