

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3692**

Heard in Montreal, Thursday, 11 September 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

EX PARTE

DISPUTE:

Concerning the assessment of 10 demerits to the record of Mr. Charles Delaney for refusing to perform overtime on August 2, 2007, resulting in his discharge effective September 1, 2007, for accumulation of demerit marks.

JOINT STATEMENT OF ISSUE:

The grievor is a composite employee at Moncton. His regular shift is from 04:00 am to 12:00 noon. On August 2, 2007, around 1 1h45 am, Mr. Delaney was requested by supervisor Carrie MacKay to perform overtime, which he refused. Mr. Delaney was subsequently investigated and assessed with 10 demerits.

The Union contests the 10 demerits issued to Mr. Delaney. The Union maintains that there was no violation of article 13 of the supplemental agreement or the Moncton overtime agreement. The Union submits that it was 33 degrees on the day in question and that the grievor had been up since 02:00 the previous night. The Union maintains that Mr. Delaney declined on the basis that he was not fit to work.

The Union requests that the 10 demerits be removed from Mr. Delaney's file, and that Mr. Delaney be compensated for lost wages and benefits.

The Company disagrees.

FOR THE UNION:

(SGD.) D. OLSHEWSKI
NATIONAL REPRESENTATIVE

FOR THE COMPANY:

(SGD.) S. GROU
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

S. Grou – Manager, Labour Relations, Montreal
F. O'Neill – Manager, Labour Relations, Toronto
C. MacKay – Sr. Terminal Coordinator, B.I.T.

And on behalf of the Union:

D. Olshewski – National Representative, Winnipeg
G. Green – Local Chairman,

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor refused to perform overtime work when directed to do so by his supervisor on August 2, 2007. The Arbitrator is satisfied that the grievor was under an obligation to respond positively to the request to perform the overtime, in accordance with a local agreement governing overtime as well as the terms of the collective agreement. Paragraph 13.9 of article 13 of the collective agreement reads as follows:

13.9 Every effort will be made to avoid the necessity for overtime. However, when conditions warrant, employees will perform authorized overtime work. Such overtime work will be allotted as locally agreed.

The Arbitrator is satisfied that conditions did warrant forced overtime in the extraordinary circumstances which obtained on August 2, 2007. While the grievor maintains that he was tired and did not feel fit to work, having completed his eight hour shift, there is no objective evidence to confirm that he suffered any particular ailment or was mentally or physically disabled from performing the work that would have been assigned to him on overtime. Indeed, the records would appear to indicate that he has performed eight hour tours of overtime on a number of occasions in the past.

Regrettably the grievor's record stood at fifty-nine demerits at the time of this incident. Given that reality it is difficult to comprehend his decision to refuse a directive to work overtime.

In the result, the Arbitrator is satisfied that the Company did have grounds to assess discipline, and that the assessment of ten demerits was not unreasonable in the circumstances. The grievance must therefore be dismissed.

September 15, 2008

(signed) MICHEL G. PICHER
ARBITRATOR