

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 8

Heard at Montreal, Tuesday, July 6th, 1965

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the use of payments made in respect of handling trains between Windsor Station and Glen Yard - suburban passenger service to make up the monthly guarantee.

JOINT STATEMENT OF ISSUE:

On certain assignments in suburban passenger service between Montreal-Vaudreuil-Rigaud, payments to trainmen for handling of drafts between Montreal and Glen Yard are being used by the Company to make up the monthly guarantee of the men.

The Brotherhood contends that the Company is violating the provisions of Article 1, clauses (F) and (G) of the Collective Agreement, under which trainmen handling these drafts must be paid, and that such payments cannot be used to make up a short day or monthly guarantee.

FOR THE COMPANY:

(Sgd.) A. M. Hand
General Manager
(Atlantic Region)

FOR THE EMPLOYEES:

(Sgd.) J. I. Harris
General Chairman

AWARD OF THE ARBITRATOR

The following are reasons for judgment delivered on July 10th, 1965, by Mr. J. A. Hanrahan, Arbitrator, following a hearing held before him in Montreal, Quebec, on July 6th, 1965, under the authority conferred by the terms of an agreement between the parties dated January 7th, 1965:

This problem arises from the Company's contention, as presented by Mr. Firmin, that the work of handling drafts (empty cars) between Windsor Station, Montreal, and Glen Yard is work incidental to the service of trainmen in such an assignment and therefore the time so paid should be used to the extent necessary to make up the monthly guarantee as called for in Article 3 (a) of the collective agreement.

Article 3 (a) of the agreement provides:

"Regularly assigned passenger trainmen who are ready for service the entire month and who do not lay off of their own accord shall receive the monthly guarantee provided for in Article 1, including overtime earned and pay for work incidental to the service of their own assignment, if any, for the calendar month."

For the Brotherhood, Mr. Harris stated there was no quarrel with the Company's position with respect to actual overtime or pay for work incidental to a regular assignment being used to make up the monthly guarantee. However, he did not agree that the handling of drafts is work that can be considered incidental to an assignment when that service is paid for on an entirely different basis. He further reasoned that although payment for handling drafts as described in Article 1 (f) as an "overtime rate", this is a misnomer, because it has no relation to regular overtime described in Article 2 (a). In other words, this is not the kind of "overtime" contemplated by Article 3(a).

The distinction between the "overtime rate", as it is called, that is paid trainmen for handling drafts and that of regular overtime is to be found first in Article 1 (f):

".....Trainmen while under continuous time pay in their regular day's assignment, when required to handle drafts will be paid at their overtime rate for actual time occupied in handling of drafts with a minimum of one hour and thirty minutes per day."

Regular overtime is provided for in Article 2 (a):

"Trainmen on short turnaround runs, no single trip of which exceeds 80 miles, including suburban and branch line service, and the work incident to such service, shall be paid overtime for all time actually on duty or held for duty in excess of eight hours (completed on each run from the time required to report for duty

to end of that run) within nine consecutive hours, and also all time in excess of nine consecutive hours computed continuously from the time first required to report until final release at end of last run."

A study of these provisions leads to the conclusion that the handling of drafts by trainmen, when such work is performed during their regular hours of assignment, does not come within "overtime" as described in Article 2(a). This being a special provision concerning work performed after eight hours, it has no application to the term "overtime rate" used in Article 1 (f).

However, that finding does not exclude application of the words in that provision "...and pay for work incidental to the service of their own assignment" in computing the monthly guarantee. It was conceded these trainmen are regularly required to handle drafts. The fact that their representatives deemed it necessary to negotiate a premium rate of pay for them "when required to handle drafts," as found in Article 1 (f), indicates a recognition that such work is "incidental to the service of their own assignment". Lacking a negotiated definition, the word "incidental" should be given its ordinary dictionary meaning, namely liable to happen".

For these reasons this claim must be disallowed.

J.A. HANRAHAN
ARBITRATOR