

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 114

Heard at Montreal, Tuesday, September 10th, 1968

Concerning

TORONTO, HAMILTON AND BUFFALO RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yardman D. Gee for time and one-half for working as Yard Foreman, Extra Yard Engine, 11:30 p.m., February 14, 1968.

JOINT STATEMENT OF ISSUE

Yardman Gee, working from the Spare List, worked as a yard helper, 8:00 a.m. to 4:00 p.m., February 14, 1968, at which time he returned to the Spare List. He was later called and worked as a yard foreman on Extra Yard Engine, starting 11:30 p.m., February 14, 1968.

Gee was paid at pro rata rate for the 8:00 a.m. to 4:00 p.m. job and claimed time and one-half for working the 11:30 p.m. job.

The Brotherhood of Railroad Trainmen claim that Gee is entitled to time and one-half under the provisions of Article 26 (b), in that less than eight hours had elapsed between the completion of his first job and the start of his second job.

The Company has declined the time and one-half claim on the basis that Gee was exercising his seniority in working the second job as a yard foreman and therefore, was not entitled to time and one-half as provided under article 26 (c).

Article 26, above referred to reads as follows:- "OVERTIME - (a) Yardmen assigned to regular shifts who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on second tour of duty within 24 hours of the starting time of the preceding shift paid for at pro rata rate, will be paid for time worked in excess of eight (8) hours continuous service and for the second tour of duty at one and one-half times the pro rata rate. b) Spare or extra yardmen who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on a second tour of duty within a 24 hour period without an interval of eight (8) hours or more having intervened between the completion of work on the previous yard job and the time required to report for work on a second yard job, will be paid for time worked in excess of eight (8) hours' continuous service and for the second tour of duty at one and one-half times the pro rata rate. c) The foregoing shall not apply when changing off where it is the practice to work alternate days and nights for certain periods, working through two

(2) shifts to change off, or when exercising seniority rights. d)
This article applies only to service paid on an hourly or daily basis
and not to service paid on a mileage or road basis."

FOR THE EMPLOYEES:

(Sgd.) K. L. MALLETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) P. W. HANKINSON
VICE PRESIDENT & GENERAL MANAGER

There appeared on behalf of the Company:

J. A. Hill Superintendent, T.H.&B. Railway, Hamilton

And on behalf of the Brotherhood:

K. L. Mallett General Chairman, B.R.T., Caledonia, Ont.

AWARD OF THE ARBITRATOR

Article 26 of the collective agreement provides as follows:

"ARTICLE 26 - OVERTIME

- (a) Yardmen assigned to regular shifts who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on second tour of duty within 24 hours of the starting time of the preceding shift paid for at pro rata rate, will be paid for time worked in excess of eight (8) hours' continuous service and for the second tour of duty at one and one-half times the pro rata rate.
- (b) Spare or extra yardmen who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on a second tour of duty within a 24 hour period without an interval of eight (8) hours or more having intervened between the completion of work on the previous yard job and the time required to report for work on a second yard job, will be paid for time worked in excess of eight (8) hours' continuous service and for the second tour of duty at one and one-half times the pro rata rate.
- (c) The foregoing shall not apply when changing off where it is the practice to work alternate days and nights for certain periods, working through two (2) shifts to change off, or where exercising seniority rights.
- (d) This article applies only to service paid on an hourly or daily basis and not to service paid on a mileage or road basis.

The interval between the grievor's first and second tour of duty on February 14, 1968, was less than eight hours. The grievor therefore claims that he was entitled to be paid for the second tour of duty at one and one-half times the pro rata rate.

"Yardman" is defined in the collective agreement as including yard foreman and helper. Although the grievor worked his first tour of duty on February 14 as a yard helper, and his second tour as a yard foreman, he was working as a yardman in each case. He was working from the spare list, and was indeed required to perform a second tour of duty without an interval of at least eight hours following the completion of his previous yard job. This is a situation which clearly falls within Article 26 (b).

It is the company's position however, that article 26 (b) does not apply, since the grievor was exercising seniority rights. If such were the case, then article 26 (b) would not apply by virtue of the provisions of article 26 (c), set out above. In the circumstances of this case that provision would read: "The foregoing shall not apply - - - where exercising seniority rights". The question in this case, then, is whether in reporting for his second tour of duty on February 14, the grievor was exercising seniority rights.

The grievor was called to work as a yard foreman in accordance with the provisions of article 38 (e) (1); he was called in his turn, being the second man called, the first man not having been reached. In calling the grievor, then, the company had regard, as it was obliged to do, to his seniority rights. On the other hand, it was a call which the grievor was required to accept. He took no positive action which could be described as "exercising seniority rights." I cannot agree with the contention of the company that he was "exercising his seniority from one grade of work to another", since he had been promoted to yard foreman in 1965.

The grievor was called in to work in accordance with the requirements of the collective agreement. It is difficult to see what meaning article 26 (b) could have if it did not apply simply because an employee was properly called in his turn. Article 26 (b), as I have noted, provides for premium payment for a second tour of duty to "yardmen" generally. The grievor came within this provision, and it has not been established that the special conditions referred to in article 26 (c) apply.

Accordingly, the grievance must be allowed. The grievor is entitled to be paid for the second tour of duty at one and one-half times the pro rata rate.

J. F. W. WEATHERILL
ARBITRATOR