CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 122

Heard at Montreal, Tuesday, October 8th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (MERCHANDISE SERVICES)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Warehouseman H. S. Crawford for five hours' pay at the overtime rate for time he was available after his regular shift to undertake a driving test on October 13, l966.

JOINT STATEMENT OF ISSUE:

Bulletin No. 318 was posted at Winnipeg on July 19, 1966, covering position of Warehouseman-driver. Warehouseman H. S. Crawford placed a bid on this position but was denied the position account not qualified. The Brotherhood requested a driving test be arranged, this was scheduled by the Company to take place after Crawford's regular shift on the morning of October 13, 1966.

The Brotherhood contends that payment should be made by the company for time spent training and undertaking driving tests in accordance with article 14.3 of the agreement.

The Company contends that this rule clearly does not provide for any payment on this account.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) L. M. PETERSON	(Sgd.) W. H. McDONALD
GENERAL CHAIRMAN	GENERAL MANAGER MERCHANDISE SERVICES

There appeared on behalf of the Company:

D. Cardi,	Labour Relations Assistant, C.P.R., Montreal
C. C. Baker	Asst. to General Manager, Mercanrdise Services, Vancouver
V. A. Birney	Supt. of Operations, C.P.R., Winnipeg

And on behalf of the Brotherhood:

L. M. Peterson - General Chairman. B. R. A. C., Toronto

G. Moore - Vice General Chairman, B.R.A.C., Moose Jaw, Sask.
F. C. Sowery - Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

Article 14.3 of the collective agreement, referred to by the union, is as follows:

> "An employee who is assigned to a position by bulletin, and in accordance with Clause 14.1, shall receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable probationary period of up to 30 calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the probationary period allowed, he will be returned to his former position without loss of seniority."

Since the grievor was not assigned to the position he sought, it is clear that article 14.3 has no application to his case. The grievor's claim that he should have been assigned to the position (in which case he would have been entitled to the thirty-day trial period) is, of oourse, another matter, and in fact this claim is the subject of a separate grievance before me as case No. 123.

The grievor's claim in this case is for pay for the time he spent in waiting for and taking a test of his qualifications for the job he sought. It is clear from the evidence that the grievor had some claim to be considered for the job. The company, of course, must make an initial determination of his qualifications, and in doing this it could, if it wished, require him to take a test. The company did not find it necessary to test the grievor before deciding on his application, but did make the determination that he was not qualified. The grievor protested and sought the test which the company agreed to administer. The issue is whether the test must be on the grievor's own time, or whether he is to be paid for the time spent.

There appears to be nothing in the collective agreement by which the company is required to administer a test. It is said that it is the company's policy that an employee who requests a test of his qualifications to drive a company vehicle takes such test on his own time and without remuneration. This policy as such is not in issue before me; its particular application in this case, however, is before me, for if the administration of the test, whether at the grievor's request or otherwise, comes within the scope of his employment, then the grievor is entitled to payment for the time so occupied. In many cases, of course, the provision of training facilities or the administration of a test may be purely for the convenience or advantage of the employee and would properly be at his own expense. In the instant case, however, the grievor had a strong case in support of his application for the posted job. Indeed, without the test results, it is difficult to see how the company could satisfactorily have answered his claim.

On October 13, 1966, the grievor had worked the 12:00 midnight to

8:30 a.m. shift. At the conclusion of his shift, he was instructed by a note attached to his time card to report to the Chief Dispatcher. He was then instructed to go with Warehouseman Driver Hawkes for a test drive. Mr. Hawkes was out, and the grievor waited until about 10:00 a.m. for his return. He then drove the truck and made several calls while Mr. Hawkes observed. The total time claimed is some five hours.

In my view, this was done in the course of the grievor's employment. The test which the company agreed to administer is the very test in which it relies in denying the grievor's claim to the job he sought. In the circumstances of this case, the grievor is entitled to be paid.

It is therefore my award that Mr. Crawford be paid by the company for the five hours in question, at overtime rates.

J. F. W. WEATHERILL
ARBITRATOR