

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 292

Heard at Montreal, Tuesday, June 8th, 1971

Concerning

CANADIAN PACIFIC EXPRESS COMPANY (CP EXPRESS)

and

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

DISPUTE:

Claim of 16 employees that overtime work at Obico Terminal was
improperly assigned to junior employees.

JOINT STATEMENT OF ISSUE:

Article 13, Overtime, Clause (j) of Agreement, reads as follows:

"Where Work is required by the Company to be performed on a day
which is not part of any assignment, it may be performed by
an available extra or unassigned employee who will otherwise
not have 40 hours of work that week; in all other cases by the
regular employee."

At issue is whether or not, where there is more than one employee
that could be considered the "regular employee", the Company must in
all cases offer such work to such "regular employees" in seniority
order.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. T. HARFORD
DIRECTOR, PERSONNEL

There appeared on behalf of the Company:

F. E. Adlam	-	Industrial Relations Representative, CP Express, Toronto
J. T. Harford	-	Director Personnel, CP Express, Toronto
J. G. MacMillan	-	Supervisor Personnel, CP EXpress, Toronto
R. J. Daniels	-	Regional Manager, CP Express, Toronto
H. R. Pierce	-	Terminal Operations Manager, CP Express, Toronto

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., Toronto
F. C. Sowery	-	Vice General Chairman, " , Montreal

J. F. Danhower - Local Chairman, Lo.2302, " , Toronto
M. Peloquin - Admn. Asst. to Int'l Vice Pres., B.R.A.C.,
Montreal

AWARD OF THE ARBITRATOR

In Case No.291 it said that to hold that the company must, in all cases, offer overtime work to the "regular employees" in order of seniority would be, in effect, to add a new provision to the collective agreement, and that the arbitrator has no such jurisdiction. That proposition applies as well in the instant case.

In the instant case there were presented three sets of circumstances in which senior employees were not offered certain overtime work. In each case, I am satisfied that the offering of overtime work to employees was made for one or more of the reasons referred to in case No.252, or for some similar reason. In no case could there be said to have been any unfair discrimination against the senior employee. In one case, the work was offered employees on the shift which was just ending; in another case the senior employee had been offered overtime work previously and had refused; and in the third case, again, work was offered to the staff then on duty.

Article 13 (j) provides merely that work on an unassigned day is to be assigned to the "regular employee". Case No.252 established that in making such assignments the company could not discriminate unfairly as between employees. It suggests further that in some cases at least seniority of employees could be the appropriate criterion for making the assignment; but it is clear from that decision that there could be many situations in which it would be proper to assign such work to someone other than the senior employee. The situations involved in the instant case are examples of such.

For the foregoing reasons, the grievance must be dismissed.

Arbitrator