CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 319

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN PACIFIC EXPRESS COMPANY

and

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

DISPUTE:

Claim of Highway Vehicleman N. Peckham, London, Ontario, for six hours' pay at penalty overtime rate of time and one-half account an extra trip from Toronto to London on October 21, 1?70, being assigned to another employee.

JOINT STATEMENT OF ISSUE:

Vehicleman N. Peckham was advised October 21st, 1970, on his arrival at Toronto, Ontario, that he would be required to perform an extra trip from Toronto to London on completion of his regular trip to London.

On arrival at London he was advised that he would not be required to make the extra trip as it had been assigned to another employee.

The Union contends that once this employee had been instructed to work overtime on completion of his regular assignment, and adjustments in his regular shift were made to provide for this, the Company could not rescind such instructions without being required to pay the employee the wages he would have earned had he completed the overtime assignment as originally scheduled.

The claim was denied by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) J. T. HARFORD
GENERAL CHAIRMAN	DIRECTOR, PERSONNEL

There appeared on behalf of the Company:

F. E. Adlam	Industrial Relations Representative, CP Express, Toronto
W. E. Massender	Regional Manager, CP Express, Preston, Ont.
D. R. Smith	Regional Manager, CP Express, Montreal

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.	Sowery	Vice General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The issue in this case is concisely put in the joint statement: may the company rescind instructions to perform overtime work, without paying the employee for the work which would have been performed.

There are two particular features of the case which must be referred to. One is the assignment of the work in question to another employee. This, in itself, was not improper, and if the work had been offered to that employee in the first place there could, in my view, have been no proper complaint. Accordingly, the grievance may be treated strictly in terms of the issue as stated, and not in terms of any contest as between employees. Secondly, in this case, the grievor seems to have worked through his regular lunch hour, in order to commence the overtime work sooner. Whatever payment he may have been entitled to as a result of working through his lunch hour, it cannot, I think, properly be said that he then had begun the overtime work in question. Even if he had, it would not follow that the company was thereby obliged to provide all of the work which had been arranged. That is, the issue in this case is the same as that which would arise at any time with respect to overtime work where the company determined that the work was not to continue any further.

Article 13, relied on by the union, deals at some length with the matter of assignment of and payment for overtime. The only portion of that article which might be said to bear materially on the situation in the instant case is article 13(1), which is as follows.

> (1) Employees shall be required to work overtime only when absolutely necessary. Owing to the necessities of the business and in the interests of the shipping public it is understood that overtime may be necessary and when necessary will be authorized and performed. It is understood that when employees are held for overtime duty they will be given reasonable opportunity to procure necessary meals.
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> It is further understood that an employee who is required to work overtime for 2 or more hours immediately prior to or continuous with regularly assigned hours, shall be allowed at the first reasonable opportunity a 20 minute meal period without deduction of pay. Employees recalled for duty after release at the completion of day's work and employees directed to return to work after the lapse of more than one hour after completion of day's work shall be considered recalled, and shall be paid for such recall time

> at rate of time and one-half with minimum of $2.00. If recall is between the hours of midnight and 6:30 a.m. the minimum will be $3.00.

That article does not deal with the issue which has arisen here: it does, however, provide a minimum guarantee where an employee is "recalled". In the instant case, what is sought is payment much larger than an employee could claim under that section, and yet it is not suggested (and it does not appear to be the case) that the grievor here was "recalled". Indeed, the claim in this case is greater than any claim which could be made under the minimum guarantees set out in article 16(b) for employees called to work.

It is apparent that the claim in this case is not based on the provisions of the collective agreement, but would in fact require the addition to the agreement of provisions going substantially beyond what is contained there now. The grievor of course was inconvenienced and disappointed, but he was not deprived of anything to which he was entitled under the collective agreement, and it is the agreement above which is the basis of my jurisdiction.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR