

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 389

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN PACIFIC EXPRESS LTD (CP EXPRESS)

and

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

DISPUTE:

The Brotherhood claims that the Company violated Articles 38.4 and 13 of the agreement when it denied overtime pay to employee M. Farrow, Highway Vehicleman, Sudbury, Ont., on March 1st and 2nd, 1972.

JOINT STATEMENT OF ISSUE:

Employee Farrow holds regular assignment of Highway Vehicleman Sudbury-Elliott Lake-Blind River Route, hours of duty 10.00 a.m. - 7:00 p.m.

On March 1st, due to severe snow conditions, he was unable to complete his assignment and was required to bed down at Massey, Ont.

On March 2nd he was able to partially complete his assignment and return to home terminal at Sudbury.

The Brotherhood claim employee should have been paid 7 hours wages at penalty rate of time and one-half for period 7:00 p.m. March 1st, to 2:00 a.m. March 2nd, and 3 1/2 hours wages at penalty rate of time and one-half for period 6:30 a.m. to 10:00 a.m. March 2nd.

This claim was denied by the Company.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) F. E. ADLAM  
DIRECTOR, LABOUR RELATIONS  
AND PERSONNEL

There appeared on behalf of the Company.

F. E. Adlam	Director, Labour Relations & Personnel, CP Express, Toronto
J. J. Cowan	Director of Personnel, CP Transport Co.Ltd., Toronto

W. E. Massender                      Regional Manager, CP Express - Preston

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, B.R.A.C.	- Montreal

#### AWARD OF THE ARBITRATOR

On March 1, 1972 the grievor left Sudbury at about his usual departure time. By the time he reached Massey, a severe snow storm had developed and road conditions made it hazardous to proceed further. At about 1:30 p.m. he telephoned to Sudbury from Massey. The material before me is conflicting as to whether the grievor was then instructed to return to Sudbury or whether he was told to telephone to Sudbury again later that afternoon. I make no determination of that point. In any event the grievor did not return to Sudbury (it seems clear that road conditions would not permit it) nor did he again check with the office that day. Instead, according to his account, he waited with his vehicle until 2.00 a.m. on the morning of March 2, before taking a hotel room and getting some sleep. In the circumstances, this does not appear to have been a reasonable course. There was no reason to assume that on such a day he would be expected to remain with his vehicle after his regular working hours when he had been virtually immobilized at Massey since the early afternoon and had no further instructions. Indeed, it would have been reasonable for him simply to have parked his vehicle in some proper place and left it from the middle of the afternoon. He would have been entitled to his regular day's wages, and he was so paid in this case. There was no requirement that he remain with his vehicle all evening.

On the morning of March 2 he arose early and contacted the office in Sudbury at 7:30 a.m. He was advised to proceed to Blind River and then, rather than make his usual trip to Elliot Lake, to return to Sudbury. He left Massey at approximately 9:00 a.m. and reached Sudbury by 2:15, after which he went home. Again, he received his regular day's pay.

By Article 13, overtime occurs after eight hours service, and on March 2, the grievor did not work eight hours. He did work at least one hour ahead of his regular scheduled hours, and by Article 13 (n), employees may not be laid off in order to equalize overtime. While it is doubtful if the grievor should be said to have been laid off, the fact is that he did not work a substantial portion of his regular shift - much more than the amount of time worked prior to the shift - and was paid for the entire shift. There was no violation of Article 13 (n) in this.

For the reasons given, then, it must be my conclusion that the grievor was not entitled to overtime payment for the times claimed, and the grievance must be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR