

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 391

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Brotherhood claims the Company violated Master Agreement dated May 14, 1971 when the Company did not apply the full 7 % wage increase, effective January 1, 1972, to rates of pay in effect for Crossing Watchmen, employed on the Atwater Crossing, Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

A Memorandum of Agreement was negotiated in 1958 according the Crossing Watchmen, Atwater Crossing, a differential in rate of 10 cents per hour as compared with other Crossing. Watchmen account more duties and greater responsibilities. This differential gradually increased to 15.3 cents account the application of general wage increases.

A Memorandum of Agreement was negotiated in 1969 reclassifying all Maintenance of Way positions with the object of standardizing classifications and adjusting any Job rate where it could be found that such rate was inequitable in its relationship with other rates. This was in accordance with Article II of Non-Ops Master Agreement dated March 14, 1967.

The 1969 Agreement increased rates of pay for Crossing Watchmen but not up to the rate then being paid the employees on the Atwater Crossing. The Atwater Crossing employees retained their higher rates on an incumbency basis until January 1, 1972 when a general wage increase erased the incumbency differential.

FOR THE EMPLOYEES:

(SGD.) P. A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

W. H. Barton System Labour Relations Officer, C.N.R.,
Montreal

G.	Carra	Regional Labour Relations Officer, C.N.R., Montreal
B.	Cadieux	Asst. Supervisor Outside Service,

And on behalf of the Brotherhood:

P. A.	Legros	System Federation General Chairman, B.M.W.E., Ottawa
W. M.	Thompson	Vice President - B.M.W.E., Ottawa
L.	Boland	General Chairman - London
R.	Hebert	Local Chairman-148 Montreal
L.	Dimassimo	Local Chairman-B.M.W.E., - Montreal
G.	Masse	General Chairman-B.M.W.E., - Montreal

AWARD OF THE ARBITRATOR

A general 7 % increase was effected on January 1, 1972, and it was applied, in respect of the Crossing Watchmen at the Atwater Street Crossing to the basic rate of their classification. It was not applied to their actual previous hourly rate, which had included a differential rate, negotiated in 1958 as set out in the Joint Statement of Fact. The substantial issue raised by the grievance is whether the differential rate continued to apply after the 1969 Memorandum, referred to in the Joint Statement of Fact, was agreed to.

It was contended at the outset of the Union's presentation tha the grievance must be allowed since it involves a claim for wages and the Company had failed to render a decision with respect to such claim within the prescribed time limits. In fact the Company's reply to the claim, made by the officer to whom the claim was directed and within the prescribed time limits was to the effect that the matter was beyond his control and that it should be taken up at another level. While this reply could have been more explicit, it amounts to a "decision" in that it makes clear at least that the claim must be processed further. In the circumstances, it would be improper to conclude that the Company had defaulted and thus became liable to pay this claim.

It was the Company's preliminary contention that the claim now brought by the Union had in fact been raised previously by the Union, that it had been consistently declined by the Company, and that it had not been processed to arbitration by the Union within the times provided. It is true that the Union did raise what is essentially the same contention as that now put forward, during the course of the year 1971. It is not clear that the claim was raised as a grievance in the manner provided for in the collective agreement, or that it was filed as a wage claim by employees themselves. In the circumstances, I would be hesitant to conclude that the Union was now prevented from proceeding, but in view of the resolution of this case which is made on other grounds, I do not find it necessary to determine this issue.

As set out in the Joint Statement, a Memorandum negotiated in 1958 granted a wage differential to Crossing Watchmen working at the Atwater Crossing, on account of their particular duties and

responsibilities. Whether or not, by 1969, or at present, the duties and responsibilities of Crossing Watchmen at Atwater Crossing still justify such a differential is not in issue in this case and I make no comment in that regard. The issue in the instant case is, precisely, whether or not the Memorandum signed on July 22, 1969 had the effect of superceding previous wage commitments, including the differential for Crossing Watchmen at Atwater Crossing.

The Memorandum of Agreement of July 22, 1969 was made following a study, called for by the Master Agreement of March 14, 1969, of all jobs with a view to standardizing classifications and adjusting any inequities in job rates. The 1969 Memorandum set out rates for many classifications, including that of Watchman, there was a general provision for the maintenance of rates on an incumbency basis for those who, as a result of the new rates, would be subject to a lower basic rate of pay. It seems that the Crossing Watchmen at Atwater Street were considered by the Company as entitled to the benefit of the differential on an incumbency basis, but their basic rate was as set out in the 1969 Memorandum and would be the only basis of payment once incumbency provisions had run their course. The governing collective agreement was amended to conform to the provisions of the Memorandum.

At the hearing of this matter, evidence was called as to the negotiations which led to the 1969 Memorandum. While it is clear that the question of the Crossing Watchmen at Atwater Street was discussed, the evidence is conflicting as to undertaking to continue the differential which had previously been paid. The matter can only be resolved by a consideration of the agreement itself. In any event, extrinsic evidence as to what was intended by the parties in the course of their negotiations should be received only where the agreement itself is ambiguous and such evidence is required for its interpretation.

Having regard to the purpose for which the Memorandum of July 22, 1969 was negotiated, its recital that these purposes were fulfilled and its general provision that the collective agreement was amended according it must be said that the Memorandum was intended to deal exhaustively with the wage rates and classifications involved. The clear thrust of the document is to deal in an orderly and conclusive way with all such questions, which would certainly include a wage differential applied to a particular Job in a classification. The result is a comprehensive schedule of wage rates, with protection on an incumbency basis for those then receiving more than the agreement would provide for. Clearly, the effect of such an agreement would be to supercede earlier particular agreements, such as the one made in 1958 with respect to the Crossing Watchmen at Atwater Street.

For the foregoing reasons, it must be concluded that the 1958 agreement was superceded in this respect by the 1969 Memorandum, and that the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR

