CANADIAN RAILWAY OFFICE OF ARBITRAION

CASE NO. 417

Heard at Montreal, Tuesday, September 11, 1973

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Company violates Local Arrangement dated April 13, 1967 authorized by Article 13.1 in the 6.1 Agreement.

JOINT STATEMENT OF ISSUE:

At St.John's, Newfoundland, on November 27 & 30, 1972, P. & D. Drivers were employed at punitive overtime rates to perform work that the Brotherhood claims was work normally performed by Warehousemen and Warehousemen Drivers.

The Brotherhood demanded the Company to pay Warehousemen C.N. Chaytor; L. Goulding and P. Atkins for 5 hours punitive overtime.

The Company denied the Brotherhood's demand.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS GENERAL CHAIRMAN	(SGD.) G. H. BLOOMFIELD ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

P. A . McDiarmid	System Labour Relations Officer, C.N.R., Montreal
D. Pelrine	Labour Relations Assistant, C.N.R., Moncton
R. Cox	Operations Supervisor, CN Express, St.John's
H. Peet	Employee Relations Offioer, C.N.R., St.John's

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B., Nfld.
M. J. Walsh	Local Chairman, Lo.443, B.R.A.C., St.John's, Nfld.

AWARD OF THE ARBITRATOR

The Union alleges that on the dates in question P.& D. Drivers did check and pre-load traffic. The Company admits that, on November 27, 1972, P.& D. Drivers did perform certain pre-loading, but argues that this was proper. It is,denied, however, that these employees performed checking on November 27, and it is denied that any of the work referred to was performed by P.& D. Drivers on November 30, 1972. As to this latter point, the material before me does not support the Union's allegation and the grievance insofar as it relates to that date, is dismissed.

As to the pre-loading performed by P.& D. Drivers on an overtime basis on November 27, 1972, the Union alleges that, pursuant to a local understanding as contemplated by Article 13.1 of the collective agreement, that work ought to have been performed by Warehousemen or Warehousemen Drivers. The existence of a local arrangement relating to the sharing of overtime is acknowledged, and by this arrangement the qualified "employees concerned" share available overtime.

At the Southside Express Shed at St. John's, which is the area involved, a three-shift operation is carried out. The grievors are employed in the Shed on the 12:00 p.m. - 8.00 a.m. shift and it is alleged that they should have been called in to perform certain work which was performed by Motormen prior to midnight on the evening of November 27, 1972.

From the material before me there would appear to be a distinction to be drawn between types of traffic as far as responsibility for loading vehicles is concerned. While Warehousemen may usually load "one-stop" vehicles those used for delivery to a number of customers over assigned routes are, it seems, usually loaded by, or under the direction of, the Driver. Where it is necessary to have such work performed on an overtime basis, it would seem to me proper to have such work performed by a Driver familiar with the route involved and it is my view that such a practice would be in compliance with the local arrangement.

Insofar as the grievance involves the grievors' claim to perform his particular preloading work, then, the grievance must be dismissed. As far as checking is concerned, however, that work is not normally performed by driver but by Warehousemen. If such work was performed on the occasion in question, and if the Warehouse staff then at work was not directed to it, so that it had to be performed on an overtime basis, then it would seem that such overtime work ought to have been distributed among the Warehousemen. No other claims being advanced, those of the grievors would succeed.

ln fact, the material before me conflicts as to the performance of the checking work relating to the material which was pre-loaded on November 27. The Union alleges, repeating the assertion of one of the Drivers in question, that the Drivers did the checking, and signed the appropriate waybills. The Company denies that, citing the unlikelihood of that having been required. Apart from the direct evidence of the persons involved or of others who were present (and the Union's material comes closest to that), the best evidence as to what was done would be obtained from an examination of the waybills,

and these are in the possession of the Company although, due to the manner in which they are filed (which may be most efficient in some respects) it is a difficult matter to retrieve them. The General Chairman requested that the waybills be produced but this was not done because of the difficulty involved. While the obligation imposed by Article 9.3 of the collective agreement with respect to the production of evidence may not apply in cases other than discipline cases, nevertheless it is my view that in view of the non-production of the material evidence, and in view of the other material before me, the proper conclusion to draw is that checking was performed by the Drivers called in on an overtime basis. This would be work to which Warehousemen, and in particular the grievors, were entitled.

For the foregoing reasons the grievance, insofar as it relates to the performance of checking on an overtime basis on November 27, 1972, must succeed. While the material does not show precisely what portion of the time concerned is involved in checking, it was stated at the hearing to involve some two hours. It is accordingly my award that the grievors be paid two hours' pay at overtime rates.

J. F. W. Weatherill
ARBITRATOR