CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 471

Heard at Montreal, Tuesday, October 8th, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Union claims the Company violated Section 5, Clause 4 of Wage Agreement No. 14 when Sectionman J.M. Leger was not allowed 50 hours of overtime between the period September 6 to October 2, 1973 inclusive.

JOINT STATEMENT OF ISSUE:

The grievor was regularly employed as a Sectionman on a section gang headquartered at Coteau, Que. Mr. Leger was taken from his regular section gang and assigned to a special gang which was engaged in a character of work which required the services of a flagman for protection at crossings. As the Company considered Mr. Leger as unqualified to act as a flagman, such duties were assigned to other members of the gang. These duties consisted of 50 hours of overtime worked by two members of the gang in September and October 1973.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. A. LEGROS SYSTEM FEDERATION GENERAL CHAIRMAN	(SGD.) G. H. BLOOMFIELD ASSISTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

W. H. Barton	-	System Labour Relations Officer, C.N.R., Montreal
J. E. Sauve	-	Roadmaster, C.N.R., Coteau
C. Pelletier	-	Work Equipment Supervisor, C.N.R., Montreal
C. LaRoche	-	Senior Labour Relations Assistant, C.N.R., Montreal

And on behalf of the Brotherhood:

P. A. Legros	-	System Federation General Chairman, B.M.W.E., Ottawa
R. Gaudreau	-	General Chairman, B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

While there appears to be no express provision with respect to the division of overtime work, it is clear that the grievor has been systematically kept from the performance of certain duties which fall within the scope of his job classification and to which he would normally have been assigned. It seems that, had such work occurred within his regular working hours, he would likewise have been excluded from it. In the result, the grievor was kept from the performance of certain work otherwise available to him by reason of his classification and assignment. This resulted in a financial loss to the grievor and it is difficult, in the circumstances, to say that this was not, in effect, a form of penalty imposed on him as a result of an incident which occurred on Septemher 4, 1973. That incident was investigated, and it was subsequently decided by the company that no discipline would be assessed.

While it might have been open to the company to demote the grievor on the ground that he was not competent to perform all of his duties properly (a question which is not before me in this case), the company did not purport to do that. Had it done so, that question might then have been raised through an appropriate grievance. Instead, without advising the grievor that he was either disciplined or demoted, the company restricted his assignment and thus affected his earnings adversely. In the circumstances, this must be considered as a form of discipline, and it is clear that it was contrary to clause 4, section 5 of the collective agreement. This decision does not, however, go to the merits of any question as to the grievor's actual qualifications.

For the foregoing reasons, the grievance is allowed. On the material before me, the actual amount of overtime work of which the grievor was deprived is not capable of precise calculation. I retain jurisdiction to complete the award in that respect in the event that the parties are unable to agree as to the amount payable to the grievor.

Arbitrator