

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY

TO

CASE NO. 471

Heard at Montreal, Tuesday, October 8th, 1974

and

Tuesday, January 14th, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

There appeared on behalf of the Company: January 14th, 1975.

W. H. Barton - System Labour Relations Officer, C.N.R. Montreal  
C. Laroche - Senior Labour Relations Assistant, C.N.R.,  
Montreal  
J. E. Sauve - Roadmaster, C.N.R., Coteau

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

SUPPLEMENTARY AWARD OF THE ARBITRATOR

In the award in this matter the grievance, a claim for overtime work, was allowed. I retained jurisdiction to deal, if necessary, with the question of the actual amount of overtime work of which the grievor was deprived. The parties were unable to resolve that question, which was presented to me for final determination.

The grievor was the senior of three men who, from time to time, were called on to perform overtime work of the type in question. It is established, however, that the grievor was not particularly eager to work overtime, and, while it seems he was usually accorded a right of first refusal, he refused more often than not. I was not referred to any collective agreement provisions which would govern the matter of entitlement to overtime as between the grievor and the others.

During the period of approximately six months prior to the time when the grievor was prevented from doing the work in question, one man, Mr. Binette, worked 190 hours' overtime; another, Mr. Pilon, worked

112 hours' overtime and the grievor worked 61 hours' overtime. The average overtime worked was 1/3 of the total, or 121 hours, but in fact the grievor only worked 16.5% of the total overtime hours.

During the period covered by the grievance, that is, from September 6 to October 2, 1973, there were 50 hours of overtime worked. Of these, Mr. Binette worked 8, while Mr. Pilon worked 42.

From this, it would appear that no pattern of overtime distribution as between the two men is established. No clear foundation appears for presuming that any such pattern would persist in the case of the grievor. In the absence of any other criterion for assessing the extent to which the grievor might have accepted overtime in work, and bearing in mind a) his seniority; b) his low rate of acceptance during the preceding period., and c) the variation shown in rates of acceptance, the only safe and proper conclusion would be that "equality is equity" and that a simple average should be accepted as the best guide. Accordingly, I determine that the grievor would have worked 1/3 of the 50 overtime hours which were worked during the period in question. He is therefore entitled to be paid for 16.66 hours at the overtime, rates then in effect, and I so award. That is the extent of the grievor's loss as closely as it can be determined.

J. F. W. WEATHERILL  
ARBITRATOR