CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 519

Heard at Montreal, Tuesday, September 10th,1975

Concerning

CANADIAN NATIONAL RAlLWAY COMPANY

and

BHOTHERHOOD OF MAlNTENANCE OF WAY EMPLOYEES

DlSPUTE.

Claim on behalf of Work Equipment Operator J. R. Demers for 5 hours' overtime pay, September 14, 1974.

JOlNT STATEMFNT OF ISSUE..

During the week beginning MOnday, September 9, the Company required an operator for a tie-spacer machine. There being no regular Work Equipment Operator available for the machine, a sectionman, not having seniority as a Work Equipment Operator, was employed. The sectionman operate the machine from Monday to Friday. On Saturday, the machine was required to be operated for five hours, and the sectionman was again employed. Because this occurred on the sixth day of the work week, it was considered overtime work.

Regular Work Equipment Operator J. R. Demers who had worked the first five days that week on a gang in the vicinity, and for whom Saturday was a rest day, claimed he should have been called for the overtime work in question. The Company declined the claim, and the Brotherhood has progressed a grievance contending that the Company was in violation of Article 5.32 of Agreement 10.3.

FOR THE EMPLOYEE..	FOR THE COMPANY..
(SGD.) P. A. LEGROS	(SGD.) S. T. COOKE
SYSTEM FEDERATlON	ASSISTANT
GENERAL CHAlRMAN	VlCE-PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company..

A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
C. LaRoche	Employee Relations Officer, C.N.R., Montreal
G. Cournoyer	Regional Supervisor Work Equipment Operations, CNR, Montreal

And on behalf of the Brotherhood..

P. A. Legros	System Federation General Chairman, B.M.W.E.,

		Ottawa
G. D.	Robertson	Vice President, B.M.W.E.. Ottawa
R	Gaudreau	General Chairman, B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

Article 5.3. of the collective agreement is as follows..

> "5.32 Machines in Groups, I, Il and IIl may be operated by Extra Gang Labourers or other employees for temporary periods when no regular Operator is immediately available. Employee temporarily operating such machines will not establish Operator seniority and will be compensated in accordance with this agreement."

The machine in question was a Group II machine. During the period in question, on regular working days Monday to Friday, there was no regular Operator immediately available. A sectionnan was used to operate the machine, and there is no doubt that, by reason of Article 5.32, that was quite proper as far as the period from Monday to Friday was concerned, since that was the time when no regular Operator was immediately available.

As far as the overtime work on the weekend was concerned, however, there was a Work Equipment Operator available, namely the grievor. The issue is whether he was entitled to be assigned such overtime work.

I would agree with the Company's submission that the meaning of temporary periods when no regular Operator is immediately available "should be construed according to a test of reasonableness. No doubt in most cases the displacement of the temporary operator for the purpose of daily overtime by an Operator who had finished his assignment, or was on his lunch break, would be unreasonable. The ''temporary period'' of unavailability would no doubt include such brief periods of time. Where weekend overtime is concerned however, it does not appear to me to be unreasonable that Work Equipment Operators who are available should be considered as entitled to be assigned such work. It is possible that in exceptional circumstances where it is important that a particular employee continue to work, a different conclusion would be reached, but it was not suggested that this was such a case.

Here, the work was "on a day which was not part of any assignment and as such was to be assigned - subject to qualifications not here material - to "the regular employee". While the grievor was not the regular employee in the sense of holding a regular assignment to this particular Job, he was "a regular employee" holding seniority under this collective agreement, which the sectionman was not. Article 5.32 limits very precisely the work and status of persons not within the bargaining unit, and Article 3.8 provides for the assignment of overtime - generally, weekend overtime - as between employees in the unit. Bearing this in mind, it is my view that the temporary period during which the sectionman could properly be used for this work did not include the weekends, when the grievor was available.

Accordingly, and having regard to the circumstances of the particular case, the grievance is allowed.

J. F. W. WEATHERHILL
ARBITRATOR