CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.526

Heard at Montreal, Wednesday, Oct.15, 1975

Concerning

CANADIAN NATIONAL RAlLWAY COMPANY

and

CANADlAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE

The Brotherhood alleges that the Company violated the provisions of a local agreement on overtime as provided for under Article 5.1 of the Agreement.

JOINT STATEMENT OF lSSUE.

Mr. T. M. Ballish was regularly assigned as Value Clerk at Edmonton on the 2330 to 0730 shift. On November 5, 1974, a rest day for Mr. Ballish, overtime work was required on his 2330 to O730 shift of Value Clerk anD he was assigned by The Company to perform it under the provision of the local overtime agreement related to Clerks. On November 5, 1974, Mr. B.R. Reinhart, the grievor, completed his own assignment from 1530 to 2330 and claims that, as a more senior employee to Mr. Ballish, he should have been called to perform overtime on the 2330 to 0730 shift of Value Clerk under that portion of the local agreement on overtime related to Clerks. The Company disputes this contention.

This grievance was processed through the various steps of the grievance procedure and ultimately to arbitration.

| FOR THE EMPLOYEE: | FOR THE COMPANY: |
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| (SGD.) J. A. PELLETIER | (SGD.) S. T. COOKE |
| NATIONAL VICE-PRESlDENT | ASSISTANT VICE-PRESIDENT LABOUR RELATIONS |

There appeared on behalf of the Company:

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| P. A. McDiarmid | System Labour Relations Officer, C.N.R. Montreal |
| R. J. Wiebe | Labour Relations Assistant, C.N.R. Edmonton |

And on behalf of the Brotherhood:

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| R. Henham | Regional Vice President, C.B.R.T., Vancouver |
| T. Quinn | Local Chairman, C.B.R.T., Montreal |
| P. E. Jutras | Regional Vice President, C.B.R.T., Montreal |

J. A. Pelletier  National Vice President, C.B.R.T., Montreal

AWARD OF THE ARBITRATOR

ln the instant case there was overtime work required in the classification of Value Clerk, and the issue is whether, in assigning that work the Company should have looked first to the senior available person in that classification, or whether it should have looked first either to the senior person on the preceding shift, or the senior person who would work on the shift in question, albeit on different days. The Company chose the latter course. The grievor would appear to have been the senior person on the preceding shift and he was in any event senior to the person called in to do the work.

The collective agreement contemplates local written arrangements governing the performance of authorized overtime work. ln the instant case the parties had made such an arrangement, and this case is therefore to be governed by its terms. ln my view, the agreement is not ambiguous in the sense that evidence of past practice would be necessary in order to determine its meaning. The agreement is as follows:

> "The provisions of the new Canada Labour Code makes it necessary to agree to the following conditions..
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> > "An employee who has worked more than 40 hours but less than 44 hours in a calendar week and who is entitled to be called for an extra shift will be called and will be permitted to work up to four hours. Another employee will be called, if necessary, to complete the eight-hour shift, an employee who has worked in excess of 45 hours in a week will not be called for further work in that week if other qualified employees are available."

DlSTRlBUTlON OF OVERTIME FOR THE THREE CLASSES OF EMPLOYEES WlLL BE AS FOLLOWS:

CLERKS:

The clerical employee covering the position will be asked first to work any necessary overtime. Otherwise qualified clerks will be called in order of seniority.

WAREHOUSEMEN:

The warehouseman covering the position will be asked first to work any necessary overtime. Otherwise qualified warehousemen will be called in order of seniority. lf sufficient qualified warehousemen are not available, motormen will be called in order of seniority.

MOTORMEN.

The motormen covering the position will be asked first to work any necessary overtime. Otherwise qualified motormen will be

called in order of seniority.

Any employees wishing to work overtime on week-ends must leave their name and phone number, each weekend, with their Supervisor making themselves available for call and wlll be called, if they qualify, in order of seniority."

The material portion of that agreement governing this case is of course the paragraph relating to Clerks. l agree with the Company's submission that that paragraph is not confined to determining the distribution of overtime on a general holiday or overtime at the end of a shift. lt would also apply to the distribution of overtime on employees' rest days. The clause is not restricted as to the overtime situations to which it applies. It is not a provision for equitable distribution of overtime, but is rather one for the distribution of overtime in accordance with one of two schemes: first, the Company is to look to "the clerical employee covering the position". Failing performance of the work by such a person, the Company is then to call "qualified clerks" in order of seniority.

In a sense, it might be said that neither the grievor nor Mr. Ballish was "the clerical employee covering the position" in question: the grievor's hours were not those of the position, and Mr. Ballish's days of work did not include those of the work to be done. ln another sense, both employees might be said to "cover the position", which was one within the scope of their classification. ln this sense, the grievor might be the more likely candidate for the overtine since he was already at work, "covering" the position up to the time the overtime was required, and did not need to be called in on a day off; as was the case with Mr. Ballish. If the matter is viewed simply on its merits, and if it is considered either that both employees "covered the position" or that neither of them did, then in either event, it would be appropriate to allocate the overtime work on a seniority basis, that being the basis agreed to by the parties in the local arrangement.

Thus: as between the grievor and Mr. Ballish, the grievor might appear to have the better claim to be considered as "the clerical employee covering the position" in this case, on the other hand, if both the grievor and Mr. Ballish were to be so considered, the grievor's claim to the work would prevail on the basis the parties have agreed to, finally, if neither employee is considered as "the clerical employee covering the position" (and that is, strictly speaking, the most accurate way of putting it, in my view), then clearly the grievor, as the qualified clerk with the greater seniority was entitled to be called for this work. In any event, it will be seen, the grievor's claim would appear to be justified, under the terms of this particular arrangement.

For the foregoing reasons, the grievance is allowed.

J. F. WEATHERHILL,
ARBITRATOR