CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 578

Heard at Montreal, Wednesday, November 10, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Steel Bridge Gang employees A. Levesque, C. Frechette R. Gauthier, J.C. Lachapelle, M. Labossiere, A. Piche, S. Boileau, J. Lottinville and P. Bedard for eight hours of pay, each at their respective straight time rates, for each work day February 23 to March 26, 1976, both dates inclusive.

JOINT STATEMENT OF ISSUE:

The grievors were regularly assigned to a Steel Bridge Gang. They were assigned to work 0700 hours to 1600 hours with one hour for lunch, Monday through Friday each week, and Saturdays and Sundays designated as rest days.
From February 23 to March 26, 1976, without notification to the Local Chairman and/or General Chairman, and without posting notice in a place accessible to the grievors, the Company changed the grievors' regular day shift assignment to a night shift (2400 hours to 0800 hours) assignment, whereupon the Union claimed a violation of Articles 2.3 and 4.7 of Wage Agreement 10.2.

The Company acknowledged a violation of Article 2.3 and paid the grievors at their respective overtime rates for time they worked outside of their regular day shift assignment during the claim period, but declined to compensate them for the hours they did not work on their regular day shift assignment.

The Union contends that the grievors were required to suspend work during their regular working hours to equalize overtime in violation of Article 4.7 and that they are therefore, entitled to compensation for the hours on their regular day shlft assignment.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) P. A. LEGROS	(SGD.) S. T. COOKE
SYSTEM FEDERATION	ASSISTANT VICE-PRESIDENT -
GENERAL CHAIRMAN	LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew - System Labour Relations Officer, C.N.R. Montreal

R. F. Paradis - Regional Gang Supervisor, C.N.R., Montreal
P. J. Thivierge - Regional Labour Relations Oificer, C.N.R., Montreal
C. LaRoche - Employee Relations Officer, 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
G. D. Robertson - Vice President, B.M.W.E., Ottawa

AWARD OF THE ARBITRATOR

Article 2.3 deals with notice of change of starting time. The Company acknowledged violation of this article and, as the Joint Statement indicates, paid the grievors at overtime rates for the time worked outside of their regular assignment. The claim now made is for hours which would have been in the regular assignment had it not changed, and which were not worked.

Article 4.7 is as follows:

> "4.7 Employees shall not be required to suspend work in regular working hours to equalize overtime."

A similar provision was dealt with in Case No. 163, where an employee's hours were changed without proper notice. It was awarded that he be paid for the hours worked on the first day of the new schedule at overtime rates but a claim for payment for the old hours not worked was dismissed. It was said that the grievor had not been "required to suspend work" in order to "absorb" overtime. There, the grievor had agreed to work on a preferable shift as a matter of convenience. That element does not appear here, but it is not a significant distinguishing feature. What occurred here was a change of regular hours, not an addition of overtime to normal hours, accompanied by a reduction oi the normal hours in an attempt to avoid overtime. lt is because there was a proper notice of the change of hours that the time worked is to be paid for at time and one-half, and not because it is overtime in the usual sense. In this case too, then, there is not an attempt to "absorb" overtime into regular hours. lndeed, overtime rates have been paid, not avoided.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR