

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 641

Heard at Montreal, Tuesday, November 8th, 1977

Concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS,  
EXPRESS AND STATION EMPLOYEES  
(SYSTEM DIVISION NO. 135)

DISPUTE:

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Discipline assessed Communications Maintainer Apprentice W. Osmar for refusing an overtime call on Sunday, February 20, 1977.

JOINT STATEMENT OF ISSUE:

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On Sunday, February 20, 1977, Communications Maintainer Apprentice, W. Osmar, at Moosonee, Ontario, was advised by his Foreman to respond to a Transmitter AFC alarm at Onakawana and a Receiver Path alarm at Otter Rapids. Mr. Osmar refused to work the overtime call and was subsequently suspended for 90 days. At Step 2 of the grievance procedure, the discipline was reduced to 70 days.

The Union progressed the appeal to Step 3 of the grievance procedure asking that the discipline be completely cancelled and requesting that Mr. Osmar be compensated for all wages lost as a result of his suspension. In support of its request, the union claimed that the employee was erroneously charged and improperly disciplined.

The Company maintained that Mr. Osmar had no justifiable reason for not working the overtime call and was properly subject to discipline.

FOR THE EMPLOYEE:

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(SGD.) G. E. HLADY  
GENERAL CHAIRMAN

FOR THE COMPANY:

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(SGD.) F. S. CLIFFORD  
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo	-	Manager Labour Relations, O.N.R. North Bay, Ont.
L.K. Smiley	-	Senior Director Administrative Services, O.N.R., North Bay
D.M. Fretz	-	Maintenance Foreman, Moosonee, Ont., O.N.R.

And on behalf of the Brotherhood.

G.E. Hlady	-	General Chairman, B.R.A.C., Barrie, Ont.
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T.C. Smith            - General Secretary Treasurer, B.R.A.C., Montreal  
F.E. Soucy            - General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR  
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There is no doubt that the grievor did refuse a call for overtime work on the day in question. This was a call for emergency work; it was a particular "assignment" which was properly made, and which he ought to have accepted, subject to there being proper justification for his refusal. The argument that there was no proper notice of overtime does not apply in the circumstances of this case.

The essential issue in the case is whether or not the grievor was justified in refusing the overtime assignment. It appears that the only reason he gave at the time for refusing the request was that "there was company at the house" although it does not appear that the "company" were his own guests or of great importance to him. Later, at his investigation, he indicated that there were personal reasons as between himself and the other maintainers which he did not want to go into. It appears that this related to the view that the other maintainers received higher rates of pay by reason of their superior educational qualifications. As a three-year employee, however, the grievor was receiving a rate at least equal to that of the other maintainers. In any event this reason would not be sufficient justification for the grievor's refusal to go out on the emergency job.

The major justification which was pressed at the hearing of this matter was that the grievor had been drinking and was not in a fit condition to carry out the work. The grievor would not, it may be observed, have been guilty of a violation of Rule "G", because he was not "subject to duty" at any of the times when any drinking was done. He had, it seems, been at a party the previous night, and he had drunk some beer before and after a curling match which preceeded the overtime call. There was no suggestion at the time, nor at the first investigation of the matter, that the grievor had been drinking to any serious extent. It was only at a supplementary investigation that the grievor said that he had had, on that, day "four or five pints and during the game some wine and one beer at Doug's (the foreman's) after the game". Accepting the grievor's statement, and bearing in mind that this amount of drinking was spread over a number of hours, it would not appear that the grievor would necessarily be so affected by drink as to have been unable properly to carry out his duties. There is no suggestion that it occurred to anyone, at the material time, that this might be the case.

From the material before me, it is my conclusion that the grievor was not justified in refusing a proper order to perform overtime work properly assigned to him. The situation was a serious one, involving a possible loss of communication with the rest of the world for the community, and severe discipline was appropriate.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR