

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 664

Heard at Montreal, Tuesday, June 13th, 1978

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim for one day's pay at time and one half for Saturday, March 5, 1977, submitted by Industrial Services Clerk, P.D. Duff, Moncton, N.B.

JOINT STATEMENT OF ISSUE:

Mr. D. Leblanc worked his own assignment on Sunday, February 27, Monday, February 28 and Tuesday, March 1, 1977. His regular days off were Friday and Saturday. Mr. Leblanc exercised his seniority and obtained a temporary vacancy, effective Wednesday, March 2, 1977. The days off on this temporary vacancy were Sunday and Monday. Thus he worked on the temporary vacancy until Saturday, March 5, 1977, for a period of 7 consecutive days.

The Brotherhood contends that Mr. P.D. Duff should have been called to perform the work on the temporary vacancy worked by Mr. Leblanc on Saturday, March 5, 1977, under Article 6 of the Local Overtime Agreement.

The Company declined the claim.

FOR THE EMPLOYEE:

(SGD.) J.A. Pelletier
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S.T. Cooke
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

C.L. LaRoche - System Labour Relations Officer, Montreal
L.H. Steeves - Manager-Carload Centre, Moncton, N.B.

And on behalf of the Brotherhood:

J.A. Pelletier - National Vice-President, C.B.R.T.G.W.

AWARD OF THE ARBITRATOR

It is the union's contention that in the circumstances described in the joint statement, "the company circumvented the provisions of the Canada Labour Code by allowing one employee to exceed the maximum

number of hours allowed, and thereby denied another employee his rights under the local overtime agreement".

It appears clear that Mr. Leblanc worked, during the week in question, some 56 hours being, obviously, in excess of the 48 hours permitted under the Canada Labour Code. There is no suggestion that any special permission or special circumstances obtained which would permit such an assignment. There appears, then, to have been a violation of the Canada Labour Code. I make that finding simply as one necessary to the exercise of my jurisdiction under the collective agreement. A similar finding was made in Case No. 496, and it may be of value to repeat what was said there as to its basis:

Having regard to the provisions of the Canada Labour Code I find that it was not open to the employer to assign the grievor, nor to the grievor to accept an assignment to work more than one additional half-hour during the week in question. (The Code refers to "the total hours that may be worked by any employee".) The Code is quite clearly, a "statute which is involved in the issues" which have been brought before me here, and it is my obligation to construe it. *McLeod v. Egan* ("re Galt Metal Industries"), (1974), 46 D.L.R. (3rd) 150 (S.C.C.).

Since, as I find, it was improper to assign Mr. Leblanc to work on Saturday March 5, and since he did perform work on that day, I conclude that some other employee was denied the right he would otherwise have had to do that work on that day. The grievor claims the work because he was, it appears, first in line to be called for overtime pursuant to the local overtime agreement. It has not been shown, however, that the company was under any obligation to call anyone from the overtime list. It is the company's assertion that there were qualified spare and relief employees, who had not worked 40 hours that week, available to be called. It is not necessary to make any finding of fact with respect to this: it is sufficient to note that it has not been shown that any employee would have been called from the overtime list. Thus, it has not been shown that the grievor himself suffered any loss as a result of the extra work improperly assigned to Mr. Leblanc.

The question before me is the individual claim of Mr. Duff. Since it has not been shown that there was any violation of the collective agreement or the local overtime arrangement affecting him personally, the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR