CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 747

Heard at Montreal, Wednesday, March 12, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Spare and Relief employee Mr. D. Robillard for overtime for working 1600 - 2400 March 9, 1979.

JOINT STATEMENT OF ISSUE:

Mr. Robillard, a spare and relief employee as defined in Article 13.3b, worked 0800 - 1600 March 9 as a crew clerk. Upon completion of his shift he was asked and he accepted the assignment of siding checker 1600-2400 March 9.

The Brotherhood submitted a claim on behalf of Mr. Robillard claiming he was entitled to punitive rate of pay of a siding checker for the second tour of duty on March 9.

The Company has declined the claim.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD) J. D. HUNTER	(SGD.) S. T. COOKE
NATIONAL VICE PRESIDENT	ASSISTANT VICE-PRESIDENT - INDUSTRIAL RELATIONS & L.O.

There appeared on behalf of the Company:

J. A. Fellows	-	System Labour Relations Officer, CNR, Montreal
R. Groome	-	Labour Relations Assistant, CNR, Montreal
E. E. Sahli	-	Carload Manager, CNR, Windsor, Ont.

And on behalf of the Brotherhood:

F. C. Johnston	-	Regional Vice President, CBRT, Toronto

AWARD OF THE ARBITRATOR

The grievor, as a spare and relief employee, did not have a regular assignment of his own, but was required to report for work upon eight hours' notice. Such employees have no certainty that a regular week's work (that is, forty hours' work) will be available in any week.

In the instant case, the grievor would have been required to accept the call to work from 0800 to 1600 as a crew clerk on the day in question. In any event he accepted the call, performed the work, and was paid the appropriate rate. He was then offered a further eight hours' work, for the period 1600 to 2400 on the same day, this time as a siding checker. The grievor was not obliged to accept this second assignment, but it was open to him to do so, and he did. He performed the work and was paid the appropriate straight-time rate. The issue in this case is whether or not the grievor ought to have been paid for the period from 1600 to 2400 at overtime rates.

Clearly, had the grievor been a regularly assigned employee, he would have been entitled to be paid at overtime rates for time worked in excess of his regularly assigned hours of duty. In most cases, this would no doubt mean that regularly assigned employees are paid at overtime rates for time worked in excess of eight hours per day. Such employees would also be entitled to overtime for hours worked in excess of forty per week (although the overtime rate would not be payable twice for the same hours). That is the effect of Articles 5.01 and 5.02.

Article 5.02, indeed, appears to be of general application and applies to all employees: thus, where an employee such as the grievor works in excess of forty hours per week (whatever his assignments) he would be entitled then to payment at time and one-half. Arrticle 5.01, however, applies only to "employees on regular assignments". This is not a reference to any employees (whether holders of regular assignments or not) who may be working on an assigment which is generally a "regular" one. Rather, it is a reference to the employee himself who is regularly assigned. Such a person is entitled to over time payment for time worked beyond "the regularly assigned hours of duty" in accordance with Article 5.01. The grievor was not such an employee, and article 5.01 does not apply to his case.

There was no provision of the collective agreement referred to which would require the payment of "daily overtime" to a person in the grievor's position. For such employees, overtime becomes payable only on a weekly basis.
It was also argued that the grievor would be entitled to overtime under the provisions of the Canada Labour Code. While it would appear that on the day in question the grievor worked more than the "standard hours of work" generally contemplated by the Code, it also appears that the grievor's working circumstances are such as to bring him within the "averaging provisions" of the Code, and that the provision of Article 5.2 of the collective agreement, for payment of overtime after forty hours of work per week, is in compliance with the requirements of the Code. While the Canada Labour Code is certainly binding on the parties, and while, as in Case No. 496 its provisions may in some cases be material to decisions made in this office, an arbitrator does not have any general jurisdiction to enforce the provisions of the Code as such.

Article 5.9 of the collective agreement provides that "extra or unassigned employees" (and certain others) will not receive overtime rates until after completion of forty hours in a work week. The

grievor, it was acknowledged, was not an "extra or unassigned" employee, and so Article 5.9 does not apply. It does not follow, however, that a "spare and relief" employee is therefore entitled to "daily overtime". There would have to be some provision of the collective agreement to that effect, and there is none. The only provision which appears to provide for payment of an overtime rate to someone in the grievor's position is Article 5.2, which applies generally to all employees, and which provides for "weekly overtime". If, indeed, "daily overtime" were payable to spare and relief employees, they might find themselves with less work available because of the claims of regularly assigned employees, entitled to exercise seniority for overtime work. The lack of provision for "daily overtime" for spare and relief employees, therefore, need not necessarily be read as unfair to that group of employees.

For all of the foregoing reasons, the collective agreement not providing for overtime payment in this case, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR