

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 786

Heard at Montreal, Tuesday, November 11, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim by Messrs. C. Salvas, E. Harbour and P. Houle, employed as
Coopers at Montreal Wharf, for four (4) hours' pay at the prevailing
rate, less actual time paid.

JOINT STATEMENT OF ISSUE:

On December 24, 1978, the above-named employees were required to work
2 1/2 hours beyond their regular finishing time of 5:00 p.m. and were
paid 2 1/2 hours at time and one-half.

The Union contends these employees should have been paid a minimum of
4 hours at the prevailing rate of time and one-half for the time
worked after 6:00 p.m. in accordance with Article 1 (e) of the
collective agreement, for a-total of 5 hours at time and one-half.

The Company contends the payment of 2 1/2 hours at time and one- half
was properly made under Article.1 (c) of the collective agreement and
that Article 1 (e) does not apply in this case.

FOR THE EMPLOYEES:

FOR THE COMPANY:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

(SGD.) J. B. CHABOT
GENERAL MANAGER - O. &M.

There appeared on behalf of the Company:

J. R. Cuin	-	Supervisor Labour Relations, CP Rail, Montreal
D. Cardi	-	Labour Relations Officer, CP Rail, Montreal
W. G. Hammond	-	Dock Superintendent, CP Rail, Montreal

And on behalf of the Brotherhood:

W. T. Swain	-	General Chairman, BRAC, Montreal
D. Herbatuk	-	Vice General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

On the day in question the grievors worked their regular shift from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. They were paid at their regular rate for that eight hours' work. They then worked overtime, from 5:00 to 7:30 p.m., and for that two and one-half hours' work, they were paid at overtime rates.

It is the Union's contention that while the hour worked from 5:00 to 6:00 p.m. was properly paid for at overtime rates, the employees were "ordered to work" after 6:00 p.m., and in respect of that period of time were entitled to be paid a minimum of four hours at "the prevailing rate" which, it is said, means the overtime rate in these circumstances. In view of the conclusion to be set out below, it is not necessary to deal with the question of the meaning of the phrase "prevailing rate" in this case. It may be noted however, that while the collective agreement provides, in Article 1 (a) for payment at "pro rata rates" for work performed from Monday to Friday; for payment at time and one-half (on the minute basis) for work between 17:00 and 18:00 (Article 1 (c)); for payment of time and one-half for work on Saturday and at double time for work on Sunday, it does not expressly provide for a special rate of pay for night work.

The collective agreement does distinguish between day hours of service (as worked by the grievors and as described above), and night hours, which commence at 18:00. By Article 1 (c) overtime (time and one-half the basic straight time rate, on the minute basis) is payable in respect of authorized time worked in excess of eight straight time hours in any calendar day. Clearly, Article 1 (c) applied in this case. The grievors did perform authorized work in excess of eight straight hours on December 14. That time worked was therefore to be considered overtime and the grievors to be paid on the actual minute basis at the rate of time and one-half the basic straight time rate. In the circumstances, the grievors were entitled to one hundred and eighty minutes' pay at such rate, and that was paid. That is precisely what the collective agreement requires.

The collective agreement also provides for what is generally known as "reporting pay". Provisions to this effect are set out in articles 1 (d) and 1 (e), to which Article 1 (i) is also material. Those articles are as follows:

- "1 (d) Employees ordered to work during day hours, Monday to Friday inclusive, shall receive a minimum of four hours at pro rata rates.
- (e) Employees ordered to work after 18:00, or on Saturdays, Sundays or holidays shall be paid a minimum of four hours at prevailing rate.
- (i) The phrase "ordered to work" as used in this Article means that employees have reported for work at the proper time and place and have been directed by the Company to duty."

The grievors were, of course, "ordered to work during day hours" within the meaning of Article 1 (d). They reported to work and were directed to duty, and since they worked eight hours as scheduled, they received more than the minimum payment required by Article 1 (d)

so that that article was complied with. The issue in this case is whether or not the grievors were also "ordered to work after 18:00" within the meaning of Article 1 (e), and so entitled to a separate and distinct minimum payment in respect of work performed after 18:00.

In my view, Article 1 (e) does not apply in the circumstances of this case. Of course, if the grievors had left work following the completion of their regular shift at 5:00 p.m., and had then been recalled to work that night, the article would apply and the grievors would be entitled to a minimum payment. That was not, however, the case. Rather, the grievors simply stayed on and worked on an overtime basis. While they naturally had certain assignments (and so were "ordered" to work in a certain broad sense of the term), they did not have to "report for work" or be "directed to duty". The grievors were not, in respect of their overtime hours on December 14, "ordered to work" within the meaning of Article 1 (e) read in the light of Article 1 (i). There was no occasion for a second "call-in" or "reporting" guarantee, because there was no second call-in or reporting. The grievors, who were already at work and had had work beyond that which was guaranteed them under Article 1 (d), stayed on to work overtime and were properly paid therefor.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR