

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 789

Heard at Montreal, Tuesday, November 11, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim by Operator E. Gatt for 8 hours at punitive rate of pay for 6th of July and 3rd of August 1979 account not being called to work in violation of Article 12.15 of Agreement 7.1.

JOINT STATEMENT OF ISSUE:

Mr. Gatt had worked the 6 days previous to July 6th and to August 3rd and was not called to work on what was the second rest day in each of the weeks in question.

The Brotherhood claims that Mr. Gatt was the regular employee working the shift in question and under the provisions of Article 12.15 of the Agreement he was entitled to the work.

The Company has declined the claim on the basis that to have permitted Mr. Gatt to work in excess of 48 hours in the work week would have been in violation of the Canada Labour Code.

FOR THE EMPLOYEE:

(SGD..) G. E. HLADY
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows	-	System Labour Relations Officer, CNR, Montreal
W. A. McLeish	-	Labour Relations Assistant, CNR, Toronto
R. A. Groome	-	" " " CNR, Montreal
W. J. Behun	-	Chief Train Dispatcher, MacMillan Yard, CNR, Toronto
W. J. Rupert	-	Rules Manager, CNR, Montreal

And on behalf of the Brotherhood:

G. E. Hlady	-	System General Chairman, BRAC, Barrie, Ont.
B. E. Woods	-	District Chairman, BRAC,
F. E. Soucy	-	General Chairman, Gen.Secy.Treas., BRAC,

Montreal

AWARD OF THE ARBITRATOR

The grievor's work schedule was of five days, Saturday to Wednesday, with Thursdays and Fridays as rest days. On Thursday and Friday, July 5 and 6, and again on Thursday and Friday, August 2 and 3, work was required to be performed on the grievor's shift. Article 12.15, which applies to such situations, is as follows:

"Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

It is acknowledged by the Company that the grievor would, as "the regular employee" be entitled to this overtime work by the normal application of the terms of the collective agreement. It is argued, however, that those provisions cannot be given effect in these particular circumstances because of the requirements of the Canada Labour Code.

Part III of the Code provides, in Section 30(1) provides generally that employees may not work more than forty-eight hours in any week. "Week" is defined in such terms as to mean the calendar week. The Code provides for certain exceptions to this general rule, but it does not appear that any such exceptions apply in this case.

In the calendar weeks in question the grievor worked on the Sundays, the Mondays (in one case the Monday was a general holiday; the grievor did not work, but the permissible weekly hours are reduced accordingly), the Tuesdays and the Wednesdays. He was also scheduled to work (and presumably did work) on the Saturdays. He was assigned to work overtime (in accordance with Article 12.15) on the Thursdays. He would thus have a total of forty-eight hours of work, or of time counted as worked, including eight hours of overtime. Had the grievor worked overtime on the Fridays, it would not then have been open to the Company to allow him to work, or for him to accept work, on his regular shifts on the Saturdays. That is because the Canada Labour Code prohibits work in excess of forty-eight hours per week. As I have noted this was not a case in which any of the exceptions permitted under the Code arise, and it was not an emergency.

An employee has an obligation to meet the requirements of his regular schedule, and he cannot avoid these by seeking excessive work at other times at overtime rates. In this respect, it is of interest to note the principle expressed in Article 12.8 of the collective agreement:

"12.8 An employee will not be required to suspend work during regular hours to absorb overtime."

In the instant case, the grievor could not meet the requirement of his regular assignment and also work on the two remaining days of the week. He could work one of them and did so. The Canada Labour Code prevented him from working on the seventh day. It would be contrary to that statute to allow the grievance. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR