

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 921

Heard at Montreal, Tuesday, March 9, 1982

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Yard Helper P. Rivard for time and one-half at Yard rates for spare yard shift he worked as a Yard Foreman on September 16, 1981.

JOINT STATEMENT OF ISSUE:

Trainman P. Rivard worked as a Yard Helper in Yard Service. The nature of the position required Rivard to work five days in each seven with two rest days. Rivard's regular assignment was from 2300 hours to 0700 hours Tuesday to Saturday inclusive, with Sunday and Monday as rest days.

On Wednesday, September 16, 1981, a spare yard crew was required for 1600 hours which crew consists of a Yard Foreman and two (2) Yard Helpers.

Mr. Rivard was called for the position of Yard Foreman which position he accepted and filled the vacancy and was compensated at Pro Rata Rate of pay.

The Brotherhood contends that the Company should have compensated Mr. Rivard at time and one-half as he was entitled to be called as Yard Foreman as per Letter of Understanding, Page 154, part two (2) and is exercising his right as the senior regular assigned yardman to qualify first for overtime payment as per Article 86, first paragraph of the overtime provisions.

The Company contends that Mr. Rivard was called for the position of Yard Foreman and compensated in accordance with the terms of the current Collective Agreement, Article 86, 3rd paragraph and has declined payment of punitive rate of pay.

FOR THE EMPLOYEE:

(SGD.) GLEN WITTY  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) V. E. HUPKA  
For VICE PRESIDENT - RAIL

There appeared on behalf of the Company:

Victor E. Hupka        - Manager, Industrial Relations, ACR -  
                              Sault Ste. Marie

Newell L. Mills        - Superintendent! Transportation, ACR -  
                             Sault Ste. Marie

And on behalf of the Employees:

Glen Witty                - General Chairman, UTU, Sault Ste. Marie  
J. Sandie                - Vice-President, UTU, Sault Ste. Marie

#### AWARD OF THE ARBITRATOR

Article 86 of the Collective Agreement is as follows:

##### "ARTICLE 86 Overtime

Yardmen assigned to regular shifts who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on second tour of duty within twenty-four (24) hours of the starting time of the preceding shift paid for at pro rata rate, will be paid for time worked in excess of eight {8} hours' continuous service and for the second tour of duty at one and one-half (1 1/2) times the pro rata rate.

Spare Yardmen who are required to work in excess of eight (8) consecutive hours, or who are required to commence work on a second tour of duty within a twenty-four (24) hour period without an interval of eight (8) hours or more having intervened between the completion of work on the previous yard job and the time required to report for work on a second job, will be paid for time worked in excess of eight (8) hours' continuous service and for the second tour of duty at one and one-half (1 1/2) times the pro rata rate.

The foregoing shall not apply when changing off where it is the practice to work alternate days and nights for certain period, working through two (2) shifts to change off, where exercising seniority rights, or in the application of Article 87 (a), rules (f) and (g).

NOTE: Nothing in this Article shall obligate the Railway to call a spare Yardman who would be entitled to payment at overtime rate when there are available Spare Yardmen who could work at pro rata rate."

The grievor was a yardman assigned to a regular shift. He was required to commence work on a second tour of duty within twenty-four hours of the starting time of his preceding shift paid for at pro rata rate. It would appear, therefore, that under the first paragraph of Article 86 the grievor was entitled to be paid for this second tour of duty at one and one-half times the pro rata rate.

It is the Company's position that the grievor was not entitled to payment at the premium rate, by virtue of the third paragraph of Article 86, in that, it is said, the grievor was "exercising seniority rights".

This question, in my view, is in substance identical to that dealt with in Case No. 114. There, it is true, the interval between the grievor's first and second tours of duty was less than eight hours, which is not the case here. The material provisions of the Collective Agreement, however, in that case as in this, calls for a premium payment equally in the "within twenty-four hours" situation as in that of "in excess of eight hours' continuous service".

In Case No. 114, the distinction was between cases of work "in excess of eight continuous hours" and those of "a second tour of duty within a twenty-four hour period". The substantial issue, however, is the same, namely, whether or not the employee was "exercising seniority rights".

In the instant case the employee himself made no active claim of seniority rights. Rather, the Company called him in accordance with the entitlement set out in the Memorandum of Agreement reproduced at page 154 of the Collective Agreement. The grievor's seniority was thus recognized, as was proper, but this was not an "exercise of seniority rights" on the grievor's part, any more than it had been in Case No. 114. In my view, what is said in this respect in Case No. 114 applies equally in the instant case.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL,  
ARBITRATOR.