

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 951

Heard at Montreal, Wednesday, May 12, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(PRAIRIE REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that the Company violated Sections 5.1, 8.6, 8.7 and 9.1 of Wage Agreement No. 17 when it changed the assigned rest days of the Prairie Region Thermite Welding Gang from Saturday and Sunday to Friday and Saturday. Claim is for all employees on the Thermite Welding Gang be paid eight hours regular pay for every Friday they were required to take as a rest day and overtime rates on every Sunday they were required to work and received their regular rate of pay, during the period June 5, 1981, to July 12, 1981, inclusive.

JOINT STATEMENT OF ISSUE:

During the period June 5 - July 12, 1981, inclusive, the assigned rest days for employees assigned to the Prairie Region Thermite Welding Gang were changed from Saturday and Sunday to Friday and Saturday.

The Union contends that in instituting this change the Company violated Sections 5.1, 8.6, 8.7 and 9.1 of the Wage Agreement.

The Union further contends that the employees affected should be paid 8 hours at straight time rates for Fridays and penalty overtime for all time worked on Sundays during the period June 5 - July 12, 1981.

The Company denies the Union's contentions.

FOR THE UNION:

(SGD.) H. J. THIESSEN  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) R. J. SHEPP  
General Manager,  
Operation & Maintenance.

There appeared on behalf of the Company:

F. B. Reynolds	- Supervisor, Labour Relations, CP Rail, Winnipeg
R. E. Petley	- Assistant Regional Engineer, CP Rail, Winnipeg
K. W. Sutherland	- Superintendent of Maintenance of Way, CP Rail, Toronto
I. J. Waddell	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Union:

F. L. Stoppler	- Vice-President, BMW , Ottawa
A. Passaretti	- Vice-President, BMW, Ottawa
H. J. Thiessen	- System Federation General Chairman, BMW, Ottawa
R. Wyrostok	- Federation General Chairman, BMW, Edmonton
E. J. Smith	- General Chairman, BMW, London
A. W. Olson	- General Chairman, BMW, Regina

#### AWARD OF THE ARBITRATOR

Article 8.6 simply provides, so far as it is material to this case, that "work week" means a week beginning on the first day on which an assignment is bulletined to work. That does not affect the issue here, which is whether or not assigned rest days were properly changed. So too, Article 8.7, which prohibits the suspension of work in regular hours in order to equalize overtime, is not applicable. The question is, what were the "regular working hours"? Article 9.1 is not really in issue, although it sets out the rate to be paid the grievors if, in fact, their rest days were improperly changed.

The real issue is as to the application of Article 5.1, which is as follows:

#### "Assignment of Rest Days

5.1 The rest days shall be consecutive as far as is possible consistent with the establishment of regular relief assignments and the avoidance of working an employee on an assigned rest day. Preference shall be given to Saturday and Sunday and then to Sunday and Monday. In any dispute as to the necessity of departing from the pattern of two consecutive rest days or for granting rest days other than Saturday and Sunday or Sunday and Monday, it shall be incumbent on the Railway to show that such departure is necessary to meet operational requirements and that otherwise additional relief service or working an employee on an assigned rest day would be involved."

The effect of that provision was discussed in Case No. 700, and what was said there applies in this case. Both before and after the period in question, employees on the Thermite Welding Gang had Saturday and Sunday as days off. For the period in question these were changed to Friday and Saturday. There was no agreement to this change. The Company is not bound to maintain established rest days, however. Where the necessity of departing from the pattern referred to in Article 5.1 is disputed, as it is here, then there is an onus on the Company to show that the departure is necessary, in accordance with what is set out in Article 5.1.

In the instant case I am satisfied from the material before me that the change was necessary to meet operational requirements : the Thermite Welding Gang's work follows immediately that of the Rail

Change Out Gang so that newly installed rail strings may be welded without additional delay to that necessarily involved by the operation of the Rail Change Out Machine. Scheduling of the latter machine to work on Saturdays and Sundays is, I am satisfied, a proper operational requirement. Because of this, if Saturday and Sunday remained the rest days, then working employees on assigned rest days would be involved. Thus, the conditions allowing the Company to change the rest days existed, and there was no violation of Article 5.1. Whether or not other gangs were still able to be assigned to schedules having Saturday and Sunday rest days is immaterial to this case.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR