

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 984

Heard at Montreal, Wednesday, September 15th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(EASTERN REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On October 31, 1981, Trackman M. Iampietro, P. Iampietro and A. Iampietro were used to work overtime at Windsor, Ontario. Leading Track Maintainer G. R. Bienstman, being senior to the three Trackmen at Windsor Yard, was not advised to report for this overtime.

JOINT STATEMENT OF ISSUE:

The Union contends the Company violated Sections 13.3, 13.12, 14.4(a) and (b), 14.16, 14.22, 15.2, 15.3, 15.4 and 15.11 of Wage Agreement 41, when it did not advise G. R. Bienstman for overtime work on October 31, 1981.

The Union further contends that G. R. Bienstman, being the senior qualified employee on the Windsor Section, should have been advised of the overtime for track work on October 31, 1981.

The Union further contends that he be paid at the overtime rate of pay for the number of hours worked on October 31, 1981.

The Company declines payment and denies the Union's contention.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) L. A. CLARKE  
for General Manager  
Operation and  
Maintenance

There appeared on behalf of the Company:

I. J. Waddell - Labour Relations Officer, CP Rail, Montreal  
L. A. Clarke - Supervisor, Labour Relations, CP Rail, Toronto  
R. F. Sward - Divisional Engineer, CP Rail, London

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa  
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

The Articles referred to in the Joint Statement refer to "vacancies and new position" (Article 14) and to "staff reduction and recall" (Article 15). They do not deal with overtime assignments, and I was not referred to any provision in the Collective Agreement which would require overtime work to be assigned to the senior qualified employee.

The grievor was senior to the employees called for the overtime work, and he was, it appears, qualified to perform it. It did not, however, come within the scope of the work the grievor was regularly performing at that time, although it was the sort of work then being done by the employees to whom the overtime was assigned. While the grievor's bulletined classification appears to have been that of Leading Track Maintainer (and the work fell within that classification), he was in fact working at the time as a Group III Machine Operator (Truck Driver), and paid at that higher rate. His main responsibility was the operation of a five-ton, hoist-equipped truck. That was not required for the work in question. If Article 7.1 be considered as applying to the situation ("work on unassigned days") it could not properly be said that the grievor was "the regular employee", although it would appear that the employees assigned were such.

The Collective Agreement simply does not confer on the grievor a superior claim to the overtime work done in this case. The grievance is therefore dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.