

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1057

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

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

DISPUTE:

Claim in favour of Mr. R. Stoyka for three hours' penalty overtime.

JOINT STATEMENT OF ISSUE:

Mr. R. Stoyka attended an investigation on a rest day of his assignment, April 20, 1982. He submitted a pay claim for three hours' pay at the penalty overtime rate of the assignment under Article 9.6. which reads:

"Except as otherwise provided in Clause 9.1, employees notified or called to perform work not continuous with, before or after, the regular work period shall be paid for a minimum of three hours at time and one-half and, if held on duty in excess of three hours, time and one half shall be paid on the minute basis."

Mr. Stoyka was verbally advised to attend the investigation The Union contends such advice to be contrary to Article 27.1 which reads as follows:

"An employee shall not be disciplined or dismissed until after a fair and impartial investigation has been held and the employee's responsibility is established by assessing the evidence produced and the employee will not be required to assume this responsibility in his statement. An employee is not to be held out of service unnecessarily in connection with an investigation but, where necessary, the time so held out of service shall not exceed five working days and he will be notified in writing of the charges against him."

The Company contends the employee was properly notified of investigation and further contends that payment of three hours' penalty overtime for Mr. Stoyka's presence at the investigation was

not warranted and declined payment.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH  
System General Chairman

FOR THE COMPANY:

(SGD. R. J. SHEPP  
General Manager  
Operation and Maintenance

There appeared on behalf of the Company:

F. B. Reynolds - Supervisor, Labour Relations, CPR, Winnipeg  
R. D. Falzarano - Assistant Supervisor, Labour Relations, CPR,  
Winnipeg  
P. E. Timpson - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

R. Welch - System General Chairman, BRAC, Vancouver  
Matt Krystofiak - Vice General Chairman, BRAC, Calgary

#### AWARD OF THE ARBITRATOR

The grievor was asked to attend an "investigation", but it was not an investigation entailing any disciplinary consequences for him. He was not charged with anything, and no discipline was assessed against him (nor could any have been), as a result.

The grievor sought Union representation. It is not clear that he was, strictly speaking, entitled to it, but it would seem to have been a wise decision to accommodate him in that regard. The grievor was likewise accommodated as to the day of the investigation, but it was nevertheless the Company who called it, and who scheduled it for his day off.

Whatever might be the case where an employee, possibly subject to discipline, is held out of service and investigated in respect of stated charges, the situation in this case is, essentially, that the grievor was directed to come in on his rest day for the purpose of assisting the Company to conduct an investigation. In such circumstances, while the grievor was not performing the tasks of his regular position, he was nevertheless called in and was "at work" in the sense of being under the direction and control of the Company. He was, in my view, called in accordance with Article 9.6, and was entitled to be paid accordingly.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL,  
ARBITRATOR.