

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1083

Heard at Montreal, Tuesday, May 10, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

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

DISPUTE:

The Union contention that the Company violated Article 9.10 (b) (1) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On August 25th, 1982, Mr. W. O. Paulin, a General Clerk, hours of work 0800 - 1600, was requested to work as a Yard Clerk, 1600 - 2400, following his regular shift.

The regular employee in the Yard Clerk position who had been off sick, did appear for duty August 25th, 1982. Mr. Paulin was released from duty at 1620 and was paid twenty minutes at the penalty overtime rate.

The Union claim the Company violated Article 9.10 (b) (1) and Mr. Paulin should be paid as provided by Article 9.6.

The Company contends Article 9.10 (b) (1) was not violated and that Mr. Paulin should not have been paid according to Article 9.6, but was properly paid under Article 9.1.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH  
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL  
General Manager,  
Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan - Assistant Supervisor, Labour Relations, CPR,  
Vancouver  
P. E. Timpson - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

P. Rouillard - Vice General Chairman, BRAC, Vancouver  
P. Vermette - Vice General Chairman, BRAC, Montreal

#### AWARD OF THE ARBITRATOR

Article 9.10 (b) (1) gives the senior qualified employee the right to overtime work brought about "by an employee being absent from work and not replaced". In the instant case the grievor was asked to work the 1600-2400 shift, (following completion of his own 0800-1600 shift), to fill in for an absent employee who was not replaced. Thus, Article 9.10 (b) (1) was complied with, the grievor apparently being the senior qualified employee.

In fact, however, the regular employee did appear for duty, and so the grievor was released at 1620, and was paid for twenty minutes overtime. He seeks to be paid for three hours at overtime rates, pursuant to Article 9.6 of the Collective Agreement. That Article is as follows:

"9.6 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."

The instant case would come within Article 9.6 and the grievor would be entitled to the minimum payment provided for, except for this: Article 9.6 provides for payment to employees notified or called to perform work "not continuous with" the regular work period. The overtime the grievor was asked to work began at 1600. The grievor's regular shift ended at 1600. The overtime was continuous with his regular work period. Of course the overtime was part of another assignment. That would often be the case. What is determinative of the matter is that the overtime was continuous with the grievor's regular work period, so that the provision for payment in Article 9.6 does not apply. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.