

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1100

Heard at Montreal, Tuesday, June 14, 1983  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Mr. N. E. Whalen for 7 hours at overtime rate on January 14, 1982.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Company violated Article 7.1 of the Collective Agreement on January 14, 1982, when they assigned work to Maintenance Gang No. 13X2 at Moncton instead of Mr. N. E. Whalen.

The Company disagrees with the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company:

K. J. Knox - Manager Labour Relations, CNR, Montreal  
P. E. Scheerle - System Labour Relations Officer, CNR, Montreal  
W. D. Agnew - Labour Relations Officer, CNR, Moncton

And on behalf of the Brotherhood:

Paul A. Legros - System Federation General Chairman, BMWE, Ottawa  
J. Roach - General Chairman, BMWE, Moncton  
F. L. Stoppler - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

Article 7.1 of the Collective Agreement is as follows:

"SECTION 7  
Work on Unassigned Days

7.1 Where work is required by the railways to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other

cases by the regular employee."

The grievor is a Track Maintenance Foreman, regularly assigned to the afternoon shift (1600 - 0100) five days per week with Thursdays and Fridays as rest days. His work was that of snow removal in Moncton Terminal. On Thursday, January 14, 1982, Gang 13X2, a Maintenance gang bulletined on the Springhill, Sussex and Gort Subdivisions (including Moncton Terminal) were assigned, as they had been for some time, to snow removal work in Moncton Terminal. After working their regular shift, the crew then worked overtime, from 1700 to 2400. The grievor claims that he should have been assigned this work.

Article 7.1 does not support the grievor's claim. If this work be considered "on a day not part of any assignment", it would have been open to the Company to assign it to an available laid off or unassigned employee. "In all other cases", the work is to be given to "the regular employee". In the instant case, the grievor does not appear to have had any higher claim than those who were assigned the work. It was work they normally perform - as does the grievor - and they simply performed it on overtime, following their regular shift. I was not referred to any provision of the Collective Agreement which would require the Company to call the grievor in on his rest day to perform this work, and to withhold the assignment from Gang 13X2, who would appear to have been no less entitled to it.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.