

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1152

Heard at Montreal, Wednesday, November 16, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. R. Niro and Mr. W. Miller both worked in the position of Assistant Extra Gang Foreman on the Alberta Ballast Gang during the period July 16, 1982, to August 29, 1982. Mr. R. Niro is claiming the overtime assigned to Mr. W. Miller account being the senior Assistant Extra Gang Foreman.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. 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 No. 41, all recognize that the senior qualified employee is entitled to the position of his choice.
2. Mr. R. Niro was the senior qualified employee in the position of Assistant Extra Gang Foreman on the Alberta Ballast Gang.
3. Section 7.1, Wage Agreement 41 and Understanding No. 2 would entitle him to such overtime, especially on July 17, 24 and 25, August 7, 8, 14, 15, 28 and 29, which are all work on rest days.
4. Mr. R. Niro be paid all overtime hours worked by Mr. W. Miller that are in excess to the overtime worked by R. Niro, July 16 to August 29, 1982, both dates inclusive.

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

FOR THE BROTHERHOOD:

FOR THE COMPANY:

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

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

There appeared on behalf of the Company:

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|-----------------|--|
| R. A. Colquhoun | - Labour Relations Officer, CPR, Montreal              |
| F. R. Shreenan  | - Asst. Supervisor Labour Relations, CPR,<br>Vancouver |
| R. Greenfield   | - Roadmaster, CPR, Prairie Region                      |

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMW, Ottawa
L. M. DiMassimo	- Federation General Chairman, BMW, Montreal
E. J. Smith	- General Chairman, BMW, London
R. Y. Gaudreau	- Vice-President, BMW, Ottawa

#### AWARD OF THE ARBITRATOR

The grievor, Mr. R. Niro, occupied the position of Assistant Gang Foreman on the 1982 Alberta Ballast Gang Operation. During the summer, 1982, Mr. Niro was assigned supervisory duties with respect to the "Front Gang" consisting of approximately 10 employees.

During the same period, Mr. W. Miller occupied the same position of Assistant Gang Foreman and was assigned supervisory duties over 12 employees with respect to the "Back Gang". While Mr. Miller performed his supervisory duties as Assistant Gang Foreman with respect to the "Back Gang", he was given numerous opportunities to work overtime. It is common ground that the grievor, Mr. Niro, was not given similar opportunities to work overtime. As the more senior qualified employee, the grievor therefore claims compensation for the missed overtime opportunities that were given Mr. Miller.

The Collective Agreement, as so many of the arbitral precedents have stated, does not contain any provision governing the assignment of overtime on a seniority basis. None of the provisions relied upon by the trade union that deal with the privileges extended "the senior qualified applicant" have any relevance to the distribution of overtime. Indeed, the employer in the assignment of overtime is merely required to be fair and equitable. It need not have had any regard to seniority.

I am therefore satisfied that the employer, in having regard to Article 7.1 of the Collective Agreement acted properly in assigning the overtime work to Mr. Miller, the incumbent employee, who performed on a regular basis the work for which the overtime was required.

In this case the grievor's qualifications, as the more senior employee, are not even an issue. For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.