

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1184

Heard at Montreal, Tuesday, February 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

(Atlantic Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Flagging protection was required at Mileage 3.5, Ste. Agathe Subdivision during November and December, 1982. Track Maintainer L. Dubois did the flagging except November 29, 30 and December 1 and 2, 1982. The total claim is for 9 hours at overtime rates for the period November 29 to December 2, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Section 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, all recognize that the senior qualified employee is entitled to the position of his choice.
2. Mr. L. Dubois was the senior qualified Track Maintainer on that Section, and Section 7.1, W.A. 41 would entitle him to this work.
3. Mr. L. Dubois worked as Flagman prior to November 29 and after December 2, 1982.
4. He be paid at the overtime rate as follows: November 29, 2 hours, November 30, 3 hours, December 1, 3 hours, December 2, 1 hour, for a total of 9 hours account junior employee performed the flagging on these dates.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) J. L. FORTIN
Acting General Manager
Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers - Supervisor Labour Relations, CPR, Montreal

J. H. Blotsky - Asst. Supervisor, Labour Relations, CPR,
Montreal
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal
D. J. David - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa
L. DiMassimo - Federation General Chairman, BMW, Montreal
R. Gaudreau - Vice-President, BMW, Ottawa
G. Valence - General Chairman, BMW, Sherbrooke

AWARD OF THE ARBITRATOR

In this case it is common ground that the grievor, Mr. L. Dubois, Track Maintainer, is the senior more qualified employee who was available to perform "flagging" protection duties on an overtime basis on November 29, 30 and December 1 and 2, 1982. The grievor disputes the overtime assignment to the more junior employee, Leading Track Maintainer Y. Fugere.

Again, despite this Arbitrator's ruling in CROA Case 1152 and the arbitral precedents that preceded that decision that there exists no provision in the collective agreement as presently worded that ensures that the most senior qualified employee will be assigned overtime responsibilities, the trade union has submitted another grievance alleging the same wrongdoing. At most the collective agreement may impose is the requirement that the employer be fair in the exercise of its prerogative in assigning overtime.

In the particular circumstances of this case the employer had adopted the practice of assigning flagman's duties on an overtime basis to the incumbent employee who discharged those functions during the course of the regular shift.

The evidence disclosed that the grievor was the beneficiary of this practice both before and after the period that the alleged breach of the agreement arose. In my view he has no complaint if another employee is granted the same benefit in similar circumstances.

The grievance is accordingly denied.

DAVID H. KATES,
ARBITRATOR.