

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1211

Heard at Montreal, Wednesday, March 7, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On March 5 and 6, 1983, B & B employees were worked overtime installing a culvert at Mile 117.3, Cascade Sub-Division. The Union claims that Messrs. D. S. Rogal and K. Gannon should have been utilized.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Section 7.1, Wage Agreement No. 41 and Understanding No. 2 when junior employees were used for the work on March 5 and 6, 1983.
2. Both employees were qualified to perform the work of installing culverts.
3. That each employee be compensated at the overtime rate of pay, 13 hours each on March 5, 1983, and 9 hours for Mr. Rogal and 8 hours for Mr. Gannon on March 6, 1983.

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

There appeared on behalf of the Company:

|                 |  |
|-----------------|--|
| F. R. Shreenan  | - Supervisor Labour Relations, CPR, Vancouver          |
| D. N. McFarlane | - Asst. Supervisor Labour Relations, CPR,<br>Vancouver |
| R. A. Colquhoun | - Labour Relations Officer, CPR, Montreal              |
| M. K. Couse     | - Observer, CPR, Montreal                              |

And on behalf of the Brotherhood:

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

#### AWARD OF THE ARBITRATOR

The grievors, Messrs Rogal and Gannon, grieve that they were denied the opportunity to work overtime on March 5 and 6, 1983, by virtue of being by-passed by more junior employees. The overtime work in question pertained to installing a culvert at Mile 117.3 Cascade Sub-division, Coquitlam, B.C.

On the basis of the material before me, Mr. Rogal was not, from the company's perspective, available to accept the overtime work because he had not informed his superiors that he had returned from retraining school in Calgary, Alberta, before his expected date of return on March 7, 1983. Moreover, the grievor, Mr. Gannon, was not an employee who "regularly" worked on the track section pertaining to the overtime work as prescribed by Section 7.1 of Wage Agreement No. 41.

To the extent the overtime claim is based on the grievors' assertion of being the more senior, qualified employees for the work in question I make no further comment than was stated by me in CROA Cases 1152 and 1184.

For all the foregoing reasons these grievances are rejected.

DAVID H. KATES,  
ARBITRATOR.