

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1213

Heard at Montreal, Wednesday, March 7, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On May 3, 1983, Machine Operator G. E. Smith sustained a personal injury while at work. On May 4, 1983, following his regular working hours, Mr. Smith was required to attend an investigation into the aforementioned injury. The Union claims that Mr. Smith should be paid at the overtime rate for all time spent attending the investigation.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. G. E. Smith is entitled to 1 1/2 hours pay at overtime rate of pay for Group 1 Operators. Section 8.1, Wage Agreement 41.
2. The Company violated Section 18.10, when the reply at Step 3 was out of time limits and at Step 4, Section 18.6 no reply received, and is therefore payable as presented.
3. Mr. G. E. Smith be paid for 1.5 hours at the overtime rate for Group 1 Operators.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH  
General Manager,  
Operation and Maintenance

There appeared on behalf of the Company:

D. Lypka	- Asst. Supervisor, Labour Relations, CPR, Winnipeg
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMW, E, 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 principal issue in this case is whether the requirement made of the grievor to attend an investigation of an incident that resulted in a personal injury after his regular shift on May 4, 1983, was "work" that should attract the overtime premium rate under Article 8.1, Wage Agreement 41.

The ancillary issue raised in this case is whether the company forfeited to the grievor his claim for overtime by virtue of its breach of the time limits at Step 3 and Step 4 of the grievance procedure in its untimely reply to the grievance.

Article 18.10 reads as follows:

"18.10 Where, in the case of a grievance based on a claim for unpaid wages, a decision is not rendered by the designated officer of the Company as outlined in Clause 18.6 within the prescribed time limits specified, the claim will be paid. The application of this clause shall not constitute an interpretation of the Collective Agreement".

It is common ground that the company has violated, as alleged, the relevant time limits prescribed by the collective agreement. Because I am satisfied that the grievor's claim, to the extent the overtime premium is requested for the hours he attended the investigation, is for "unpaid wages". The company must pay the grievor that claim. I can discern no language in Article 18.10 that limits the company's liability under that article, as argued, to simply a dispute with respect to the quantum of unpaid wages. Inasmuch as Article 18.10 does not contain any such restrictive language a claim for unpaid wages may involve disputes with respect to both quantum and entitlement. In this particular case, the parties' dispute pertained to the grievor's entitlement to be paid as "work" the overtime premium for time spent after his regular shift attending the investigation. As a result of the breached time limit, the company must pay him his claim irrespective of the merits.

As Article 18.10 prescribes the result in this case does not "constitute an interpretation of the collective agreement". The employer is directed to pay the grievor his claim for overtime.

DAVID H. KATES,  
ARBITRATOR.