

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1333

Heard at Montreal, Wednesday, February 13, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)
and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. L.S. Gawel was appointed by Bulletin No.83-88 December 2, 1983 to the position of Temporary Snow Clearing Machine Operator - Group 1, Ballast Regulator, Calgary Division, headquartered at Field, B.C.

His regular assigned hours were 0730 to 1130, 1230 to 1630, Monday to Friday. The Company utilized Mr. D.K. Harder to work Mr. Gawel's machine on the Revelstoke Division after 1630 on overtime. The Union claims that another man should not have been allowed to operate this machine after regular working hours under any circumstances.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Section 8.1, Wage Agreement 41 when they appointed another employee to work overtime on the machine to which Mr. L.S. Gawel was appointed to work.
2. Mr. Gawel be compensated at the overtime rate of pay for Group 1 Operator from January 11, 1984, and onward, for each overtime hour worked by Mr. Harder on the machine to which Mr. Gawel had been assigned by Bulletin.

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

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:

F. R. Shreenan - Supervisor, Labour Relations, CPR, Vancouver
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa

R. Y. Gaudreau - Vice-President, BMW, Ottawa
L. M. DiMassimo - General Chairman, BMW, Montreal

AWARD OF THE ARBITRATOR

This is a claim by the grievor, Mr. L. S. Gawel, for overtime work involving snow removal duties on the Revelstoke Division.

The employer instead assigned the said snow removal duties to Mr. D. K. Harder. The trade union alleges that the company violated Article 7.1 of Agreement 41 which reads as follows:

- 2 -

"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."

Mr. Gawel's entitlement to his claim turns on whether or not the snow removal work involved is part of his regular assignment. Obviously, if snow removal work on the Revelstoke Subdivision is not part of his regular assignment the grievor cannot be considered "the regular employee" entitled to the work. And if that be the case, it then becomes an irrelevant consideration for the purpose of this dispute as to whether Mr. Harder or any other employee was properly assigned the work in question.

The undisputed evidence demonstrated, particularly having regard to the job bulletin awarding the grievor snow removal duties on a temporary basis, that the limits of his work jurisdiction was confined to the Calgary Division. It is common ground that snow removal responsibilities do not overlap one another with respect to the two divisions. In other words, the grievor has not shown that the snow removal duties for which he claims entitlement are part of his regular assignment on the Calgary Division.

Nor does the fact that both Mr. Harder and Mr. Gawel are headquartered in Field, B.C., and may from time to time share the same snow removal machinery in the performance of their respective duties change the character of their respective work assignments. Both employees clearly are entitled to the benefits under the collective agreement that accrue commensurately with their assigned work tasks.

Moreover, I am not convinced that Article 14.17 of Agreement 41 assists the grievor in support of his claim. Article 14.17 enables the company, in cases of emergency, to transfer an employee temporarily from one seniority territory to another without prejudice to the seniority of the employee transferred in his regular territory. In the circumstances described herein it has not been shown that the snow removal work in question was the result of an emergency; and, even so, the discretion rests with the company under

Article 14.17 as to whether it requires the assistance of an employee from another territory.

In the last analysis, because the grievor has not shown that the snow removal work in question is part of his regular assignment he was not "the regular employee" who is entitled to claim compensation for his having been by-passed. And, whether or not Mr. Harder, because of a defect in his appointment, was the "regular employee" entitled to the assignment is not a question I need answer in the circumstances of this case.

For all the foregoing reasons the grievance is dismissed.

DAVID H. KATES,
ARBITRATOR.