

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1415

Heard at Montreal, Wednesday, October 9, 1985  
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

On May 5, 1984, Section 1, Calgary was required to work overtime. Two Group 3 Operators were used from Section 1. Mr. Daruba, normally assigned Unit 4713-66 was used to operate Unit 4713-47 normally operated by Mr. Salter. The Union claims 10 hours at the overtime rate of pay for Mr. Salter.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Section 7.1, Understanding No. 2, in assigning Mr. Daruba to the overtime for unit 4713-47, normally assigned to and worked by Mr. Slater during regular hours.
2. The position awarded to Mr. Daruba by bulletin was Unit 4713-47, which is a Group 2 rate of pay.
3. Mr. Salter be paid overtime at the Group 3 rate of pay for 10 hours May 5, 1984, account his normally assigned position was worked by Mr. Daruba.

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

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

F.R. Shreenam                    - Supervisor, Labour Relations, CPR,  
   Vancouver  
R. A. Colquhoun                - Labour Relations Officers, CPR,  
   Montreal  
R.T. Bay                         - Asst. Supervisor, Labour Relations,

And on behalf of the Brotherhood:

H.J. Thiessen                 - System Federation General Chairman,  
   BMWE, Ottawa  
R. Y. Gaudreau               - Vice-President, BMWE, Ottawa  
L. M. DiMassimo              - Federation General Chairman, BMWE,  
   Montreal  
M.L. McInnes                 - General Chairman, BMWE, Winnipeg

- 2 -

#### AWARD OF THE ARBITRATOR

Article 7.1 of the collective agreement  
provides:

Work on Unassigned Days.

"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."

On Sunday, May 5, 1984, some employees assigned to Calgary No. 1  
Section were required to perform track work on an overtime basis.  
Two Group 3 Operators were used. The grievor was a Group 3 Operator  
who was not called in to perform overtime work. Mr. Daruba, a more  
senior employee, was called in and was assigned to operate Unite  
4713-47. That Unit during the regular work week is "normally"  
operated by the grievor.

Accordingly, it was argued by the trade union that because the  
grievor was the Group 3 Operator who normally operated Unite 4713-47  
he was "the regular employee" who should have been called in to do  
the overtime work.

In my view it is not the machine that is regularly assigned an  
employee that governs his or her entitlement to overtime under

Article 7.1. Rather, what governs an overtime assignment is whether the employee is a "regular employee". Since Mr. Daruba is a regular employee, who happened to be more senior in service than the grievor, I cannot discern why the trade union has reason for complaint. But of more significance, I am not satisfied that the employer abused its discretion under Article 7.1 in its failing to assign the grievor the overtime work.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR