

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1417

Heard at Montreal, Wednesday, October 9, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On June 30, 1984, a derailment occurred on the Rockyview Spur, which is within the assigned limits of the Crossfield section. Mr. W. Given works on the Crossfield section and claims he should have been called to work overtime July 1st and 2nd, 1984.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Section 7.1, 8.1 and 32.3, Wage Agreement 41 when the Calgary West Section crew was used to repair Rockyview Spur July 1 - July 2, 1984.
2. The Rockyview Spur is part of the territory assigned to Crossfield section and Mr. W. Given is the L.T.M. on this section and should have been called for the overtime.
3. Mr. W. Given be paid his rate of pay at the overtime rate of pay for all hours worked by Calgary West Section doing the repairs. That was 13 hours July 1, 1984 and 12 hours, July 2, 1984.

The Company denies the Union's contention and submits that the grievor was not at home on two occasions when called to work the overtime in dispute. The Company further submits that on July 2nd the grievor was paid 8 hours overtime for other services.

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:

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

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	- Federation General Chairman, BMW, Montreal
M.L. McInnes	- General Chairman, BMW, Winnipeg

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#### AWARD OF THE ARBITRATOR

Pursuant to Article 7.1 of the collective agreement the company recognized that the grievor was eligible to be called in to perform overtime work on the weekend of July, 1st and 2nd, 1984. The evidence established that Roadmaster Cusano made two attempts on Saturday June 30, 1984 to contact the grievor by telephone, for the purpose of advising him of the overtime opportunity. When no one answered the telephone at the grievor's residence Roadmaster Cusano proceeded to fill the required manpower requirements from other sources.

Understanding No. 2, Section 7.1 provides:

"Subject to the provisions of Section 7.1 of Wage Agreement No. 41 where track work is required on a rest day, preference shall be given to employees regularly working on that track section to perform such work, wherever this is reasonably practicable, before calling men from an adjoining track section."

The trade union insisted that no telephone calls were made to the grievor's residence as stated by the company. Because the grievor's father-in-law was a disabled person who never left his residence it was maintained he would have been available to answer the telephone. Accordingly it was asserted that since the grievor's father-in-law never received any calls on the day in question no such telephone calls were made.

On the balance of probabilities I am prepared to give the company's version of the events the benefit of the doubt. Surely, Roadmaster Cusano had the onerous task of contacting the requisite number of employees in order that the difficulties caused by the derailment were attended to. No evidence was advanced as to why Mr. Cusano would purposely by-pass the grievor in his efforts to meet those manpower requirements or otherwise seek to deprive him of an overtime opportunity. Roadmaster Cusano's principal task was to make a sincere effort to contact the grievor. He made two attempts by telephone to contact him and that should have sufficed. In short, it was not "reasonably practicable" to give the grievor the preference he was entitled to.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.