CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1760

Heard at Montreal, Wednesday March 9, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim by B&B Foreman Mr. S. Glass and B&B Carpenter Mr. G. Lafferty for overtime worked by members of Gang 3544 onNovember 15 and 16, 1986 at Mile 46.3, Kingston Subdivision.

JOINT STATEMENT OF ISSUE:

Mr. Glass and Mr. Lafferty were members of Gang 3544. Mr. Glass was awarded the temporary position of B & B Foreman at Belleville, Ontario, pursuant to Bulletin No. 7, Item 2, dated October 27, 1986. He was told that his awarded position was to commence on November 17, 1986.

Mr. Lafferty was assigned to a B & B Carpenter position at Brockville, Ontario, effective November 17, 1986.

On November 15 and 16, 1986, Gang 3544 worked a total of 22 hours overtime at Mile 46.3, Kingston Subdivision.

The Brotherhood contends:

that the grievors should have been assigned the overtime work on November 15 and 16, 1986 pursuant to Article 8.8 of Wage Agreement 10.1;

that the Company should pay the grievors all wages lost as a result of the Company's improper overtime assignment.

FOR THE BROTHERHOOD:

(SGD) R. A. BOWDEN
System Federation General Chairman

There appeared on behalf of the Company:

E. D. Ferens - Manager, Labour Relations, Montreal
J. Glazer - Counsel, Montreal

G. Blundell	- Labour Relations Officer, Montreal
M. Vaillancourt	- Engineering Coordinator, Montreal
L. M. Bovay	- B&B Master, Belleville
A. Watson	- System Labour Relations Trainee, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Counsel, Assistant to the Vice-President, Ottawa
R. A. Bowden	- System Federation General Chairman Ottawa
R. Phillips	- General Chairman, Belleville
J. Rioux	- General Chairman, Hornepayne
S. Glass	- Grievor
C. A. Masek	- Observor

AWARD OF THE ARBITRATOR

It is not disputed that B & B Foreman S. Glass was assigned to a temporary position at Belleville and that his responsibilities in that position were to commence on November 17, 1986. The entitlement of an employee to overtime is described in Article 8.8 of the Collective Agreement which provides as follows:

> 8.8 A record will be kept of overtime worked and regular employees will be called with the purpose in view of distributing the overtime equally to the extent possible subject to the following conditions:
>
> (a) An employee is already engaged in the work for which overtime is required;
>
> (b) An employee has the qualifications required to perform the overtime work;
>
> (c) An employee on duty is immediately available for the overtime work to be performed.

In the Arbitrator's view it is implicit in the Collective Agreement, nor it does it appear disputed by the parties, that an employee's first claim to overtime is in respect of work being performed by the gang to which that employee is assigned. That, moreover, is explicitly recognized by paragraph (a) of Article 8.8.

It was open to the Company to make the assignment of Foreman Glass to the Belleville gang effective November 14, 1986. However, it chose not to do so. Accepting, as I do, that the Collective Agreement does not contemplate that an employee can be without an assignment or an assigned position, other than in a situation of layoff which is not here material, I must accept the position of the Union that Mr. Glass remained assigned to Gang 3544 through November 15 and 16, 1986 for the purposes of his entitlement to overtime. He could not then, in my view, have claimed a right to work overtime with the Belleville gang, since his assignment to that gang did not commence until November 17th. Nor is there any evidence that his relocation to Belleville on that date inhibited his ability to perform overtime in

the Cornwall area on the 15th and 16th. Mr. Glass was therefore entitled to the assignment of overtime claimed, and shall be compensated accordingly.

The same conclusion attaches with respect to Mr. Lafferty, with one qualification. It appears that only five members of the six person gang were required for the overtime assignment, one of whom was Foreman Glass. Mr. Lafferty's claim to one of the four remaining positions would have depended on his rights in respect of the equal distribution of overtime provided for under Article 8.8 of the Collective Agreement. If the situation at the time was such that he could have claimed the work consistent with a fair distribution of overtime among the members of the gang, his claim must succeed. If, on the other hand, his hours of overtime worked were then substantially greater than others in the gang, he may now be unable to claim a better right than he could have asserted then. The Arbitrator therefore finds that, subject to the equal distribution of overtime, Mr. Lafferty remained a member of Gang 3544 through November 15 and 16, 1986, with the right to overtime work on those dates subject to the equalization provisions of Article 8.8 of the Collective Agreement. He shall therefore be compensated accordingly.

I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award

(SGD) MICHEL G. PICHER
ARBITRATOR