CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1808

Heard at Montreal, Tuesday, 12 July 1988

Concerning

ONTARIO NORTHLAND RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim on behalf of employee Ms. J. Rozon for 107.76 hours pay at the straight time rate.

JOINT STATEMENT OF ISSUE:

In the 8 week averaging period ending October 31, 1987, Ms. Rozon worked 107.76 hours in excess of the guarantee of 320 320 hours. She was paid straight time for this 107.76 hours during the guarantee period in addition to her 320 guaranteed hours. At the end of the guarantee period she was also paid half time, equivalent to 53.88 hours, as an overtime adjustment.

The Brotherhood claims that Ms. Rozon should have been paid an additional 107.76 hours. The Company does not agree.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(Sgd) M. PITCHER
Representative

(Sgd) P. A. DYMENT
General Manager

There appeared on behalf of the Company:

A. Telford - Labour Relations Officer, North Bay

And on behalf of the Brotherhood:

M. Pitcher - Representative, Toronto
T. N. Stol - Regional Vice-President, Toronto

At the request of the ONR the hearing was adjourned until October, 1988.

On 12 October 1988:

There appeared on behalf of the Company:

M. Restoule - Manager, Labour Relations, North Bay
A. Telford - Labour Relations Officer, North Bay

And on behalf of the Brotherhood:

M. Pitcher - Representative, Toronto
T. N. Stol - Regional Vice-President, Toronto
J. Rozon - Grievor

AWARD OF THE ARBITRATOR

The material discloses to the Arbitrator's satisfaction that for a good number of years, perhaps as many as ten, the Company has paid regular employees for overtime on the basis which is claimed by the grievor. No evidence to the contrary has been filed, as the only exception appears to relate to spare or part time employees, whose hours might not in any event bring them within the practice proved by the Union.

It is clear that for a long time, through several renewals of the Collective Agreement, the Company's practice has continued. I am satisfied that, in these circumstances, the Company's actions amount to a tacit representation to the Union that it would not rely on the strict terms of the Collective Agreement, a literal reading of which would support the Company's interpretation. As the Union is unable to revert to its economic bargaining sanctions during the life of the agreement, it would, in my view, be inequitable for the Company to now revert to a literal interpretation contrary to its consistent practice of many years. The Union would be defenseless against such a change, which would clearly prejudice its rights. I am satisfied that this is a case for the application of the doctrine of estoppel. The grievance is, therefore, allowed and the grievor shall be compensated in the amount of 107.76 hours, as claimed.

For the purposes of clarity nothing in this award should be construed as limiting the ability of the Company to revert to the strict interpretation of the overtime provisions of the Collective Agreement should the present language continue unchanged into the next agreement. The Union is on notice of the Company's interpretation and intention, and has the fullest opportunity to deal with the issue and endeavour to protects its interests at the next round of negotiations.

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

OCTOBER 14, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR