

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1862

Heard at Montreal, Thursday, 15 December 1988

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The application of overtime to the rate of Float Driver positions.

UNION'S STATEMENT OF ISSUE:

A policy grievance was initiated at the local level of Lodge 2346, CanPar, Toronto, Ontario, regarding Article 8, "Working Hours and Overtime." The grievance refers to the rate of Float Driver and the premium rate being paid.

The Union maintains when overtime is performed, it must reflect the rate of \$13.619 per hour, which encompasses the premium rate of 50.

The Union is claiming that overtime should be paid on the Float Driver rate (\$13.619), and further, requested that all the drivers in question be reimbursed on that rate.

The Company has declined the Union's request.

FOR THE UNION:

(SGD) J. J. BOYCE
General Chairman
System Board of Adjustment 517

There appeared on behalf of the Company:

	- Counsel, Toronto
P. McLeod	- Labour Relations Officer, Toronto
D. Dougan	- Regional Manager, Western Canada
R. Johnson	- Terminal Manager, Calgary
R. Dearden	- District Manager, BC Centres outside Vancouver
F. McMullen	- Director, Human Resources, Toronto
G. Swanson	- District Manager, Quality Improvement

And on behalf of the Union:

H. F. Caley	- Counsel, Toronto
J. J. Boyce	- General Chairman, Toronto
J. Crabb	- Vice-General Chairman, Toronto
R. Moore	- Witness
D. Crawford	- Witness

AWARD OF THE ARBITRATOR

Article 8.4 of the Collective Agreement governs the payment of overtime:

8.4 All hours worked in excess of 8 hours in any one day, or 40 hours in any one week, shall be paid at one and one-half times the hourly rate of pay.

The Collective Agreement provides for an hourly premium to be paid to persons occupying a float driver position. Article 5.2.13 of the agreement provides, in part, as follows:

1. Float driver positions will be bulletined in all terminals with 25 or more routes.
2. A premium of \$0.50 per hour will be paid to any individual awarded a float driver position.

The issue is the computation of overtime for employees in the float driver classification. The Union maintains that the overtime is to be calculated on the full hourly wages earned by a float driver, including the basic hourly rate and the fifty cent per hour premium. The Company, on the other hand, maintains that the time and one-half payment provided in Article 8.4 applies only to the basic rates of pay, expressed on a hourly basis, found in Article 17 of the Collective Agreement.

In support of its position the Union points to Article 17.4 of the agreement which provides, in part:

"... Overtime shall not be calculated on the shift differential nor shall the shift differential be paid for absence from duty such as vacation, general holidays, etc."

Its counsel submits that by specifically excluding shift differential for the purposes of computing overtime, the parties have adverted to those premiums which should be so included. Having made no similar provision for the premium payable to the float driver, the Union maintains that the parties have demonstrated an intention that the fifty cent per hour premium should be included for the purposes of calculating the overtime wages payable to a float driver.

The Company counters by referring the Arbitrator to Article 17.2, which deals with the premium payment to lead hands. It is as follows:

17.2 It is understood that an employee filling the position of Leadhand shall receive not less than 25 cents per hour in excess of any employee he is required to lead at the terminal where he is employed regardless of his service.

Its counsel stresses that the foregoing allowance to leadhands has not been included for the purposes of calculating overtime earnings.

In the Arbitrator's view the cases referred to by the parties, which generally concern the overlap of overtime and shift differential payments, are of limited value in construing the language in the instant Collective Agreement. The terms of any agreement must be interpreted having regard to the totality of the language used, taken in context. Where the language itself leaves some uncertainty, past practice may be examined as evidence of the intention of the parties.

In this case both interpretations advanced by the parties are defensible on the language contained within the agreement. It is certainly arguable, as the Union asserts, that "the hourly rate of pay" referred to in Article 8.4 for the purposes of overtime would logically include the "premium of \$0.50 per hour" payable to the float driver under Article 5.2.13. On the other hand, the rates of pay appearing in Article 17 of the Collective Agreement are all expressed in hourly terms and may just as arguably constitute the hourly rate of pay referred to in Article 8.4. Moreover, the suggestion that the special exclusion of shift differential for the purposes of overtime under Article 17.4 is particularly instructive is to some degree undermined by the fact that that provision was imported verbatim from the CPET Collective Agreement, so that it does not necessarily reflect a turning of the parties' minds to the treatment of the float drivers' premium.

In the Arbitrator's view the treatment of the leadhand premium for the purposes of overtime is the most instructive piece of evidence for the purposes of resolving this grievance. It is beyond dispute that for some ten years the preponderant practice of the Company has been to exclude the twenty-five cent per hour premium payable to leadhands for the purposes of calculating overtime under Article 8.4. In my view the most probable inference to be drawn from the existence of that practice, which apparently has been protested against on only one occasion that is known, lends greater support to the Company's position that the parties did not intend the hourly rate of pay referred to in Article 8.4 for the purposes of overtime to include a premium of that kind. I find it impossible to distinguish between the twenty-five cent per hour premium payable to a leadhand and the fifty cent per hour premium payable to a float driver for the purposes of this analysis. It would, in my view, create an inconsistency in the application of the Collective Agreement if these provisions were to be treated differently, an outcome which I cannot assume would have been intended by the parties.

For the foregoing reasons the grievance must be dismissed.

December 16, 1988

(Sgd.) MICHEL G. PICHER
ARBITRATOR

