CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1945

Heard at Montreal, Thursday, 14 September 1989

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

UNION'S STATEMENT OF ISSUE:

The Company urged unionized employees to attend an N.T.A. workshop outside of their normal working hours.

The Union contends the employees are entitled to be compensated in accordance with call in Clauses 9.4 and 9.6 of the Collective Agreement.

FOR THE UNION:

(SGD) J. MANCHIP
for: GENERAL CHAIRMAN
SYSTEM BOARD OF ADJUSTMENT NO. 14

There appeared on behalf of the Company:

E. P. Wahl	- Assistant General Manager, Intermodal Operations, Toronto
P. E. Timpson	- Labour Relations Officer, Montreal

And on behalf of the Union:

J. Manchip	- Vice-General Chairman, Toronto
C. Pinard	- Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The instant case turns on the interpretation and application of Clauses 9.4 and 9.6 of the Collective Agreement. They are as follows:

> 9.4 If an employee is called in advance of his regular starting time, he shall be paid for all time worked in advance of and continuous with his regular time starting at the rate

of time and one-half on the minute basis with a minimum of one (1) hour at time and one-half.

9.6 Except as otherwise provided in Clause 9.1, employees notified or called to perform work not continuous with, before or after, the regular work period shall be paid for a minimum of three hours at time and one-half and, if held on duty in excess of three hours, time and one-half shall be paid on the minute basis.

The material establishes that in the instant case the Company conducted a number of workshops to familiarize employees with the workings of the National Transportation Act. It is common ground that these workshops were at all times voluntary. In some cases, however, they were conducted during regular working hours, without any loss of pay to employees attending. The Company made it clear to those employees who could only attend the workshop in off-duty hours that they would be paid at straight time rates for so doing. Attendance remained optional, however: employees were not required to attend and in some parts of the Company's operations some thirty-five percent of them did not do so.

The issue is whether the employees who attended the workshops during times other than their regular on-duty hours are entitled to the payment of overtime premium rates as provided in Articles 9.4 and 9.6 of the Collective Agreement. Both of those articles address the circumstance of an employee who is "called" to perform work, in the circumstances described. With some qualifications not here material, the general thrust of the provisions is aimed at employees who are required by the Company to work. It does not appear disputed that an employee who refuses a call, without justification, may become liable to discipline for failing to protect an assignment.

In the Arbitrator's view the instant case is analogous to that decided by this Office in CROA 1196. In that grievance five maintenance of way employees claimed overtime rates for voluntarily attending a first aid course sponsored by the Company. In denying the grievance the arbitrator made the following comments:

> Article 8.1 provides that employees who are required to work in excess of eight hours per day are to be paid for the overtime hours on the basis of time and one-half their regular rate of pay.
>
> The evidence further indicated that knowledge of first aid, although desirable, was not necessary in the grievors' discharge of their duties. In short, attending such first aid courses was not mandatory.
>
> Accordingly, I am satisfied that the grievors were not required to work overtime at the material time in question and accordingly were not entitled to be paid on an overtime basis. Moreover, the

> Company's willingness to pay them while they attended the course during their regular shift did not give rise to any entitlement to be paid at the overtime rate after the completion of that shift.

The foregoing passage, albeit in relation to a different collective agreement, is instructive to the resolution of this grievance. The employees who chose voluntarily to attend the workshops on off-duty time were plainly not "called" by the Company to perform work in the sense contemplated in Article 9.4 and 9.6. Even if it could be said, as may be arguable, that their endeavours in the workshops were a form of work which inures to the advantage of the Company, the undisputed fact that their attendance and involvement was entirely voluntary takes the facts outside the purview of Articles 9.4 and 9.6. Consequently no violation of the Collective Agreement is disclosed, and the grievance must be dismissed.

September 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR