CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2285
Heard at Montreal, Tuesday, 13 October 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE
DISPUTE:
Claim on behalf Mr. S.H. Knox for 35 hours of pay at Group 1 overtime rate for time required to write the UCOR "A" Book.
BROTHERHOOD'S STATEMENT OF ISSUE:
During the course of 1989, the UCOR Engineering "A" Book requirements, and the course content thereof, was revamped and integrated into the UCOR training system. As a result, the Company required the grievor to complete the written portion of the "A" Book training material. However, the Company refused to compensate him for the overtime hours he spent in training.
The Union contends that: The Company violated Article 8 of Agreement 10.1 and Article 8.11 of Agreement 10.3, in addition to any other applicable provision of the collective agreement, by not compensating the grievor for all time spent in writing the "A" Book.
The Union requests that: The grievor be compensated for a total of 35 overtime hours at the applicable rate.
The Company denies the Union's contentions and declines the Union's request.
FOR THE BROTHERHOOD:
(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN
There appeared on behalf of the Company:
D. C. St-Cyr
Manager, Labour Relations, Montreal
D. Gignac
System Labour Relations Officer, Montreal
M. S. Hughes
System Labour Relations Officer, Montreal
T. Urbanovich
Assistant Manager, Rules & Training, Montreal
S. Ranger
Superintendant, Work Equipment East, Montreal
S. Fournier
System Supervisor, Track Evaluation, Montreal
I. Steeves
District Engineer, Atlantic Region, Moncton
And on behalf of the Brotherhood:
P. Davidson
Counsel, Ottawa
R. A. Bowden
System Federation General Chairman, Ottawa
A. Trudel
General Chairman, Montreal

AWARD OF THE ARBITRATOR

The Company submits that it has not been the practice to pay for the time spent by employees in the writing of the UCOR "A" book. Its representative maintains that, in a number of railway trades, it has been normal for the Company to pay employees only for the time spent in classroom training, as well as the time taken to pass the necessary tests. On that basis it submits that there is no obligation to pay wages for the time taken by the grievor in the ``writing'' of the UCOR "A" book, a self-teaching process whereby the employee literally writes the rules.

The Arbitrator has some difficulty with the position of the Company on the facts of the case at hand. The circumstances of Mr. Knox are, in my opinion, to be distinguished from those of employees, whether in the running trades, in rail traffic control or any other trade who are required, prior to assuming a position, to complete a certain level of qualification. While it does not appear disputed that in cases of qualification for the purposes of promotion or advancement the general policy of the Company has been to require employees to do the initial writing of the UCOR "A" book on their own time, with a few minor exceptions not here material, that is a different circumstance from the instant case.

Following a report of the National Transport Agency of Canada, issued on June 17, 1988, the Company's Engineering Department reviewed the recommendations of an earlier Board order which had issued on February 12, 1974. As a result of that review the Company decided that it was under the obligation to require a number of employees, including Group I Machine Operators, the position occupied by Mr. Knox, to write their "A" book qualifications, and to subsequently attend the classroom and examination portions of the qualification process. Successful completion of the "A" book became, in effect, a mandatory qualification of the position which Mr. Knox already held. It is common ground that failure to complete the writing of the "A" book, as well as the successful completion of the classroom and examination portion, would have precluded the grievor from certain assignments, and could have adversely impacted his earnings.

Clearly, the Company was acting responsibly in seeking to comply with the terms of the order of the Railway Transport Committee originally issued in February of 1974. It was in the Company's interests to ensure that all employees covered by that order held "A" book qualification in the UCOR. The fact remains, however, that employees in the position of Mr. Knox were initially assigned the responsibility of a position covered by the federal order without first being required to qualify in the UCOR "A" book. If they had been required to so qualify before assuming their position in that classification, their circumstances would have been indistinguishable from those of employees in other trades, as well as employees in the engineering department, who had previously been required to write the "A" book on their own time as a precondition to qualifying for certain positions and assignments. What has transpired in the instant case, however, is that the qualifications of the position held by Mr. Knox were effectively upgraded in 1989, at the instance of the Company. The fact that those qualifications were imposed by regulation, and should have obtained since 1974, is neither here nor there for the purposes of the rights of the parties under the terms of the collective agreement. In the result, the grievor was required to write the "A" book, and successfully complete the classroom and test segment of the qualification, as a condition of maintaining his position. In the Arbitrator's view, the requirement thereby imposed upon Mr. Knox can fairly be characterized as work performed for the benefit of the Company.

Article 8.11 of Collective Agreement 10.3 governs the payment of employees while in training. It reads as follows:

8.11

While in training, an employee will be paid at the rate of pay he would have received had he not been in training and will be allowed actual reasonable away-from-home expenses necessarily incurred. Travel time will be paid for travel during regular working hours on regular working days. Employees required to travel on their rest days will be provided with the benefit of the Weekend Travel Assistance Letter.

In the unique circumstances of this case the Arbitrator must conclude that the Company has violated the terms of the above provision. The physical "writing" of the "A" book of the UCOR was a requirement placed upon the grievor after he had assumed the position of machine operator, as a condition of his continuing to retain that classification. His doing so was clearly in furtherance of the Company's business interests in that it satisfied its obligation to comply with the order of the Railway Transport Committee of February 12, 1974. The circumstances of this case are clearly to be distinguished from those of an employee who is required to write a rules book as a condition precedent to being promoted into a given classification. In the circumstances, the Arbitrator is satisfied that the writing of the UCOR "A" book constituted training within the meaning of article 8.11 of the collective agreement, for which Mr. Knox was entitled to payment.

The Arbitrator has some difficulty, however, with the claim for payment at overtime rates. It is not apparent from the material before me that either Mr. Knox or the Brotherhood made known to the Company his position that he should be paid for the time taken in writing the "A" book, prior to the completion of that assignment. In the result, the employer was deprived of the opportunity to consider his request, and to schedule regular working time during which he might be allowed to do so. In these circumstances the claim cannot be made for payment at overtime rates. Absent evidence that the Company was given the opportunity to allow Mr. Knox to write the UCOR "A" book on working time, or that it had any notice of his grievance until the work in question was completed, the Arbitrator cannot sustain a claim for payment at overtime rates. I am satisfied, however, that payment at regular rates for the time taken is appropriate.

For the foregoing reasons the grievance is allowed. Mr. Knox shall be compensated forthwith for the hours of pay corresponding to regular rates for the time required to write the UCOR "A" book. Should the parties disagree on the appropriate number of hours for the work involved, the matter can be spoken to.

October 16, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR