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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2517

Heard in Montreal, Tuesday, 13 September 1994

concerning

Canadian Pacific Limited

and

Brotherhood of Maintenance of Way Employees

DISPUTE:

Reconstruction of a road crossing by members of the Alyth Extra Gang.

JOINT STATEMENT OF ISSUE:

On Saturday, September 12, 1992, a rest day for Calgary Section #1, reconstruction of a road crossing was performed on the Blackfoot Trail in Calgary. The work was performed by members of the Alyth Extra Gang.

The Union contends that: 1.) Traditionally, overtime work of this nature has been performed by section gangs. 2.) In awarding this work to the Extra Gang members, on a rest day, the Company has violated Section 7.1, Section 16.3 and Appendix "C", Understanding #2 of the collective agreement.

The Union requests that: Mr. Iannuzzi, Mr. K, Markarewicz, Mr. J. McKay, Mr. C. Fusaro, Mr. S. Iannuzzi, Mr. M. Mahil and Mr. P. Gelinas, members of Calgary Section #1, be compensated for all lost P.O.T. wages for work carried out by the Alyth Extra Gang on September 12, 1993.

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) D. McCracken (SGD.) M. E. Keiran

System Federation General Chairman FOR: General Manager, Operations & Maintenance, HHS

There appeared on behalf of the Company:

R. Andrews - Labour Relations Officer, Vancouver

R. Wedel - Manager, Engineering Maintenance, Calgary

D. Cooke - Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

J. J. Kruk - System Federation General Chairman, Ottawa

D. McCracken - Federation General Chairman, Ottawa

#### AWARD OF THE ARBITRATOR

The articles relied upon by the Brotherhood in support of its claim are the following:

7.1 Where work is required by the railway to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other cases, the senior employee regularly performing the work will be called.

16.3 Extra gangs shall not be used to take the place of regular section gangs.

Appendix C, Understanding No. 2

Subject to the provisions of Section 7.1 of Wage Agreement No. 41 where track work is required on a rest day, preference shall be given to employees regularly working on that track section to perform such work, wherever this is reasonably practicable,

before calling men from an adjoining track section.

The Brotherhood objects to the assignment of work to the Alyth Extra Gang on Saturday, September 12, 1992. It submits that such work has traditionally been performed by section gangs and that on the date in question it was reasonably practicable to assign the work to the section gang responsible for the territory in question. It is not disputed, for the purposes of this grievance, that the crossing rehabilitation work which is the subject of the grievance was performed on an unassigned day, and that that day was a rest day within the meaning of Appendix C, Understanding No. 2. As the Company explained, the crossing work was scheduled for a Saturday because, as the road in question is a main north-south artery in Calgary, it is busy from Monday to Friday.

The Arbitrator has difficulty with the initial position argued by the Company with respect to the application of article 7.1. It suggests that the work in question cannot be said to be regularly performed by section crews because it involves the use of heavy equipment which is presently assigned to extra gangs. The material before the Arbitrator, however, seems to confirm that both section crews and extra gangs are used in the performance of crossing work, with section crews being utilized, where necessary, to provide manpower for the completion of tasks other than the operation of heavy equipment. On the basis of the practice, it would appear to the Arbitrator that the Brotherhood can properly claim that both section crews and extra gang employees regularly perform work in relation to the reconstruction of road crossings. However, it appears that, contrary to what occurs elsewhere, since the establishment of the Alyth Extra Gang, apparently in 1968 at the time of the construction of the Alyth Yard, that gang has consistently performed work in the reconstruction of road crossings. It would further appear that since 1989 crossing renewals in the Calgary area have been done with mixed crews, utilizing both section employees and the Alyth Extra Gang. On a number of occasions, for substantial periods of time, the Alyth Extra Gang has been assigned to work on rest days or outside regular working hours when section crews have not. The figures tabled at the hearing reveal that over the period 1989-1992 the Alyth Extra Gang was assigned twice the overtime given to section forces in road crossing reconstruction work.

The Company does not argue that the situation at Calgary is representative of general practice, or indeed of its normal obligations under the collective agreement. It asserts, however, for the purposes of the instant grievance, that a practice has been long established in Calgary, with respect to the Alyth Extra Gang, to allow the performance of crossing reconstruction work outside of regular hours, including rest days, by members of the Alyth Extra Gang, where section crew members may not be assigned.

However, a close review of the data provided to the Arbitrator raises substantial question as to the assertion of a clear practice by the Company, as regards the alleged exclusion of section employees from work in relation to crossing reconstruction in Calgary. The evidence discloses seventeen occasions between May of 1989 and September of 1992 when crossing reconstruction was performed outside of regular working hours. In the vast majority of those occasions, thirteen in number, the members of section crews were used on an overtime basis. In the

result, the Arbitrator is satisfied that the practice as it is characterized by the Company is not made out on the evidence. As regards overtime work, it appears that the preponderance of work performed in crossing reconstruction in Calgary is on the basis of a mixed crew comprised of both section employees and members of the Alyth Extra Gang. This would, it appears, be consistent with the suggestion of the Brotherhood that extra gang members can be assigned to work in conjunction with section crews, operating heavy equipment. That, moreover, would appear consistent with the practice elsewhere, as reflected in the documentation before me. The data tabled by the Company cannot, I think, be taken as clear evidence that crossing reconstruction work has been performed by the Alyth Extra Gang to the exclusion of section employees.

In the Arbitrator's view, when Section 16.3 and Appendix C, Understanding No. 2 are read together, it would appear clear that the assignment of overtime must follow the pattern of regular assignments. On that basis I am satisfied that the Company could not fairly exclude all section members from participation in the overtime work on Saturday, September 12, 1992 in relation to the reconstruction of the road crossing on the Blackfoot Trail in Calgary, but was under an obligation to assign overtime work to section crew members on the basis of a 1 to 2 ratio as compared with members of the Alyth Extra Gang.

The grievance must therefore be allowed. The Arbitrator finds that the Company violated Appendix C, Understanding No. 2 and Section 16.3 of the collective agreement and directs that the grievors be compensated at the appropriate overtime rate for all work carried out by the Assistant Extra Gang Foreman, the Trackmen A and the Trackmen B of the Alyth Extra Gang on September 12, 1992, subject only to the application of the 1 to 2 ratio described herein.

16 September 1994(sgd.) MICHEL G. PICHER  
ARBITRATOR