

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2980

Heard in Montreal, Tuesday, 13 October 1998
concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

On November 18, 1997 Mr. Pichette was instructed to finish all his deliveries and pick-ups, which required overtime, before returning to the terminal or face disciplinary action.

EX PARTE STATEMENT OF ISSUE:

On November 18, 1997 Mr. Pichette was instructed by CanPar management to finish all his deliveries prior to returning to the terminal. The completion of his duties on the day in question resulted in overtime. Mr. Pichette protested this directive and was informed failure to follow this directive would result in discipline.

Mr. Pichette finished all his assigned duties that day. Subsequently, he filed a grievance indicating the Company's actions violated article 8.6 of the collective agreement and the Company's own policy. He indicated in his grievance that junior drivers were available to perform the overtime.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) **D. J. DUNSTER**

EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) **P. D. MACLEOD**

VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. MacLeod	- Vice-President, Operations, Toronto
R. Dupuis	- Regional Manager, Manager
D. Cardi	- P&D Manager, Montreal

And on behalf of the Union:

D. J. Dunster	- Executive Vice-President, Ottawa
R. Nadeau	- District Representative, Quebec
S. Wheatley	- Financial Secretary/Treasurer, Montreal
R. Pichette	- Grievor

AWARD OF THE ARBITRATOR

This grievance concerns the application of article 8.6 of the collective agreement which reads as follows:

8.6 Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week. Overtime shall be allocated on the basis of seniority wherever

possible, in a voluntary manner, within the work classification and shifts, provided the employee is capable of performing the duties; however, upon reaching the bottom of the seniority list in that classification and shift, the junior employee(s) will be required, in reverse order to work the overtime.

The grievance arises out of the events of December 18, 1997 involving Montreal pick-up and delivery driver Rend Pichette. It is common ground that on the morning in question certain trailers were late in arriving at the Montreal terminal, which caused Mr. Pichette to be delayed in his departure onto his delivery route. It is also agreed that a certain amount of freight was removed from his truck, as it was obvious that it could not be delivered within the allotted time

During the course of the day, at approximately 2:30 p.m., Mr. Pichette, in accordance with company policy, telephoned his supervisor, Mr. Paul Cunningham, to advise him he needed help to complete his pick-up and deliveries. While it appears that Mr. Cunningham offered help in having two pick-ups covered, he did not offer any further support. When Mr. Pichette indicated that the two pick-ups would not be sufficient help, Mr. Cunningham advised him to complete his route.

Further requests made by Mr. Pichette at 3:35 p.m. and 3:40 p.m. were not fruitful, as in fact both Mr. Cunningham and Manager Dean Cardi declined to speak with him. Finally, at approximately 5:40 p.m., when Mr. Pichette spoke again with Mr. Cunningham by telephone, the latter asked employee Steve Wheatley whether he would be prepared to assist in Mr. Pichette's route. Mr. Wheatley exercised his right to decline overtime work. However, Mr. Cunningham did not further canvas some three junior employees who were apparently in the lunch room, and available to work. In the end, Mr. Pichette did complete his allotted deliveries and pick-ups, utilizing overtime to do so.

The sole issue in this grievance is whether the Company was under an obligation to relieve Mr. Pichette from overtime by providing him with the assistance of another employee, dispatched on an overtime basis within the contemplation of article 8.6 of the collective agreement. The Union relies, in part, on the decision of Arbitrator Weatherill in CROA 816, a case involving Canadian Pacific Express and the instant union, then known as the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC). **Arbitrator** Weatherill found that discipline could not be assessed against an employee who was charged with insubordination for refusing to work overtime. In that award Arbitrator Weatherill focused on the phrase "in a voluntary manner" which appeared in article 8.6 of the collective agreement there under consideration, a provision virtually identical to article 8.6 of the instant collective agreement. He concluded that the grievor was entitled to refuse to perform the overtime in the circumstances disclosed, and therefore could not be disciplined.

With respect, I do not consider that case to be controlling for the purposes of this grievance. In my view the provisions of article 8.6 were not drafted, nor did they contemplate, the circumstances described in the instant grievance. The representations of the Company, substantially unchallenged by the Union, confirm that the practice of the Company, for many years, has been to require drivers to complete their allotted pick-up and delivery assignment, even if to do so involves performing overtime. Company policy does, however, require drivers to communicate with their terminal supervisors if it appears to them, during the course of their working day, that they will be unable to complete their assignment, in the sense that they may not be able to reach the customers during normal business hours. In that circumstance, the Company has the option of dispatching additional drivers to render assistance, either from the terminal, or by redirecting drivers who are already elsewhere on the road, and may be available to assist. In this Arbitrator's view, notwithstanding what may have been said in **CROA 816**, it is in that context of determining who is entitled to that overtime that the provisions of article 8.6 come into play. When the Company makes the decision to allocate overtime work, whether to assist a driver already on the road, or otherwise, the pecking order described within its provisions comes into play, with the proviso that the junior most available driver is compelled to accept the assignment. The language of article 8.6 cannot fairly be construed as giving to a driver in the circumstance of Mr. Pichette the right to insist on the dispatch of help to avoid or minimize his own overtime burden. To conclude otherwise would fly in the face not only of the language of article 8.6, but also the longstanding practice and understanding of the parties themselves.

The foregoing conclusions are not made without an appreciation of the difficulties encountered by an employee in the position of Mr. Pichette. As the Company's representative concedes, reasonable efforts are made to ensure that work is reasonably distributed so as to avoid undue overtime burdens. By the same token, however, it is not disputed that some employees prefer to maximize their overtime. Without commenting on an appropriate resolution, it would appear to the Arbitrator that this is a matter for further negotiation and creative problem-solving by the parties themselves. For the reasons related above, however, I cannot find that in the circumstances of this case any violation of article 8.6 is disclosed.

The grievance is therefore dismissed.

October 19, 1998

MICHEL G. PICHER
ARBITRATOR