

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3229

Heard in Montreal, Wednesday, 12 December, 2001
concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**UNITED STEELWORKERS OF AMERICA (LOCAL 1976) (TRANSPORTATION
COMMUNICATIONS UNION)**

DISPUTE:

Overtime claim submitted on behalf of Mr. David Palmer for time worked by a more junior employee at the St-Luc Yard Office.

JOINT STATEMENT OF ISSUE:

On July 18, 2000 Mr. D. Palmer submitted the first of a series of step 1 grievances claiming 8 hours at overtime rate because a junior employee worked overtime on Sunday, July 16, 2000 to cover a vacant shift between the hours of 8:00 am and 4:00 pm.

The Company and the Union have agreed to put all the subsequent related grievances on file to be heard at CROA. The original list contained 34 grievances. An additional 5 grievances have been submitted.

St-Luc Yard is a 7/24 operation which is covered with one person; on Chief Clerk on days, on Assistant Chief Clerk on evening shift and one Assistant Chief Clerk on night shift and one Assistant Chief Clerk on swing shift. This staffing arrangement results in the Sunday day shift being open. When required to fill this shift, a qualified spare employee that is available at straight time is called, otherwise overtime is called.

The Union grieved that Mr. Palmer, being the senior employee should have been the one to be called in overtime in accordance with article 9.7 of the collective agreement.

The Union claimed 8 hours of salary at the overtime rate of pay for each of the grievances identified above on behalf of Chief Clerk Palmer. The Company declined the grievance on the basis that the overtime was properly awarded in accordance with the collective agreement.

FOR THE UNION:

(SGD.) N. M. LAPOINTE
PRESIDENT, LOCAL 1976
OPERATIONS

FOR THE COMPANY:

(SGD.) L. WORMSBECKER
FOR: GENERAL MANAGER,

There appeared on behalf of the Company:

L. Sabourin	– Labour Relations Officer, Calgary
C. Graham	– Labour Relations Officer, Calgary

And on behalf of the Union:

P. Conlon	– Assistant Division Vice-President, Local 1976, Toronto
N. M. Lapointe	– President, Local 1976, Montreal
R. Richard Pagé	– Executive Vice-President, Montreal

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Company has declined to offer overtime to St. Luc Yard Chief Clerk David Palmer, except on those occasions when the other clerks, who are junior to Mr. Palmer, are not available to perform the work. The Union maintains that the denial of overtime to the grievor is in violation of the collective agreement.

The Company asserts that the situation is regulated by article 9.7(b) of the collective agreement which reads, in part, as follows:

9.7(b) Work in a particular office, shed or work location which is not identifiable as belonging to a specific position due to there being two or more positions in the same job classification and performing the same work:

(1) Work which is required to be performed at overtime rates and which is brought about by an increase in work load or by an employee being absent from work and not replaced, shall first be assigned to the senior qualified employee in that job classification in such office, shed, work location and shift where such overtime is required who has signified a desire to work overtime pursuant to paragraph (3) of this Clause (b); however, if overtime work remains to be assigned, the junior available qualified employee in that job classification in such office, shed or work location and shift, will be required to work the overtime.

...

- (4)** Arrangements may be made to assign overtime work on a different basis by local agreement.

The Arbitrator has some difficulty with this submission of the Company. As noted by the Union's representative, none of the overtime opportunities which are the subject of this grievance arose by reason of an increase in work load, or because of an employee being absent from work and not replaced. Neither of the conditions precedent to the application of article 9.7(b)(1) is proved in the case at hand. As the Union stresses, this is not a circumstance of an increase in work load. It does not appear disputed that the need to assign an overtime shift on Sunday is a function of the fact that there is one chief clerk, the grievor, as well as an assistant chief clerk on afternoons, an assistant chief clerk on nights and one assistant chief clerk who works on a swing shift. The St. Luc Yard is a seven day/twenty-four hour operation which needs continuous clerical support. That inevitably results, mathematically, in there being a need for one individual to perform work in the day shift on Sundays, on overtime, save in exceptional circumstances.

The Arbitrator is inclined to agree with the Union's view that article 8.3 does have a bearing in the circumstances at hand. It reads as follows:

8.3 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 unassigned employee who will otherwise not have 40 hours of work that week; in all other cases, by the regular employee.

The evidence discloses, without apparent dispute, that the chief clerk and assistant chief clerks perform virtually the same duties, as reflected in their identical job descriptions, save for the exception that the chief clerk is responsible for overseeing payroll documentation, a task which may require fifteen minutes per day. By reason of seniority, the grievor, as chief clerk occupies the day shift. As noted above, the seven day, twenty-four hour rotation of staff results in only one shift per week being not covered, the Sunday day shift. The Arbitrator has difficulty concluding that the situation so described is not precisely what is contemplated by article 8.3. The work falls on a day which is not part of any assignment and in that circumstance it is, as clearly expressed within that article, to be assigned to "... the regular employee", unless an available unassigned employee has not made up his or her forty hours' week in that week. There is no suggestion of the latter circumstance arising in this case.

As appears evident from the application of article 8.3 to the facts at hand, the success of this grievance would mean that virtually all of the overtime would be given, or least first be offered, to the grievor. However, this collective agreement apparently contains no provision for the equitable distribution of overtime as among a particular classification or group of employees. The Arbitrator must take the collective agreement as he finds it.

In the result, the grievance must be allowed. The Arbitrator finds and declares that the overtime which is the subject of this grievance should properly have been made available first to the grievor, by the operation of article 8.3 of the collective agreement. The Company is therefore directed to compensate the grievor for all wages and benefits lost, calculated at the appropriate rate for overtime. In the calculation of compensation, some regard should be had to the frequency with which the grievor would, in all likelihood, have accepted or declined Sunday overtime. Should the parties be unable to agree upon the quantum of compensation the matter may be spoken to.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR