CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 152

Heard at Montreal, Tuesday, June 10th, 1969

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim by Mr. J. Snow and others to overtime work on November 9th, 1968, at Lewisporte, Newfoundland.

JOINT STATEMENT OF ISSUE:

The Brotherhood claims the Company violated Articles 12.15 and 13.1 of Agreement 6.1 at Lewisporte, Newfoundland, on 9 November 1968 when it called unassigned employees instead of regularly assigned employees, for a second overtime shift.

Prior to October 1968 when all the Group 3 work force at Lewisporte had worked forty hours for the week, and work was required on the rest days, Saturday and Sunday, the regularly assigned employees (senior employees) were given first call for both first and successive overtime shifts.

On 9 November 1968, after regularly assigned employees had been employed for the first eight-hour shift of overtime, unassigned Group 3 employees (junior employees), who had their forty hours worked, were called for a second shift and worked eleven hours.

The practice, in effect prior to October 1968, was discontinued by the Company with advice to, but without approval of, the Brotherhood.

The Company declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS	(SGD.) K. L. CRUMP
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– Labour Relations Asst., Montreal
L. Collard	– Labour Relations Asst., Montreal
H. Peet	– Manager Labour Relations, St. John's
F. D. Taylor	– Express Supervisor, St. John's, (Formerly Terminal Traffic Manager, Lewisporte)

And on behalf of the Brotherhood:

E. E. Thoms	– General Chairman, Freshwater P.B.

AWARD OF THE ARBITRATOR

For some years the arrangement with respect to overtime work at Lewisporte was as set out in paragraph 2 of the Joint Statement of Issue. That is, when all of the Group 3 work force had worked forty hours in a week, and overtime work was required, the regularly assigned employees were given first call for overtime, not only for the first, but also for successive overtime shifts. At Lewisporte there is a relatively small number of regularly assigned employees, and a relatively larger number of unassigned employees. Work at Lewisporte is on a seasonal basis.

This manner of assigning overtime was admittedly a long-standing practice, and probably comes within the sort of local arrangements referred to in article 13.1 of the collective agreement.

> **13.1** Subject to the provisions of Article 12.5, time worked by employees on regular assignments, continuous with, before or after the regularly assigned hours of duty shall be considered as overtime and shall be paid for on the actual minute basis at one and one-half times the hourly rate. Every effort will be made to avoid the necessity for overtime; however, when conditions necessitate, employees will perform authorized overtime work as arranged locally.

Certainly the Company in its correspondence relating to the matter refers to the practice as a "local arrangement", and all of the material before me indicates that it should be so described.

It must also be said that this practice is in accordance with Article 12.15 of the collective agreement, which provides as follows:

> **12.15** 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 forty hours of work that week. In all other cases by the regular employee.

Where unassigned employees have worked less than forty hours in any week, then clearly both by the past practice and by article 12.15 they could properly be assigned the Saturday and Sunday work in question. The problem arises, however, where the unassigned employees have in fact worked forty hours that is one of the "other cases" referred to in the last sentence of article 12.15, and it is there set out that the regular employee is to perform the work again, the past practice, or "local arrangement" coincides with this requirement of the collective agreement.

The Company's position is essentially that the past practice is unreasonable and that these provisions of the collective agreement, while applying well enough to other phases of the Company's operations, are not appropriate here. The reasonableness or the desirability of a local arrangement between the parties is not a matter on which an arbitrator is called to comment. It is possible that the arrangement is unfair to some groups of employees, although this is a determination which could only be made upon a consideration of a number of factors not material to this case. It might also be said that the practice could lead to overwork of the regular employees, or to exhaustion, preventing their proper performance of their duties. In the instant case, this is simply a matter of conjecture. The question of whether the prolonged extension of the working hours is permissible under the applicable law is not before me, and I make no determination as to that. If in fact an employee is unable to perform his duties adequately (whether by reason of overwork or for any other reason) then presumably he may be relieved of those duties. This is, however, a question which would depend on the facts of a particular case, and is not before me.

The provisions relating to overtime work may indeed have been assigned with other situations in mind than that before me. However, the fact is that these provisions are of general application and do fit the circumstances of the instant case. Although their application might to some appear unreasonable, it cannot be said that the result is so absurd as to lead to the conclusion that these provisions could not possibly apply. They have been applied in these circumstances for many years. It is not open to the Company. now to assert that the local arrangements are unreasonable and to change them unilaterally.

Whether these arrangements are wise or unwise it is the case that these are existing local arrangements, and that these arrangements comply with article 12.15. It is clear that the grievors are entitled to rely on these arrangements and in the circumstances of this case to claim the overtime work to which the local arrangements entitle them.

Accordingly, the grievances must be allowed. It is my award that the grievors are entitled to payment of their claims.

(signed) J. F. W. WEATHERILL
ARBITRATOR