CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 300

Heard at Montreal, Tuesday, September 14th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

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

DISPUTE:

Claim for employees R. Inouye, W. Jensen and J. Zimbaluk of Regina, Saskatchewan, for the difference between straight time rate and penalty time rate for work performed July 7th, 1969.

JOINT STATEMENT OF ISSUE:

Employees R. Inouye, W. Jensen and J. Zimbaluk were offered and accepted work in the Regina Terminal on their assigned rest day, July 7th, 1969.

These employees held bulletined full time mileage-rated assignments whose hours of work, rest days, etc., were provided as in Article 13.11.

The Union contends that the work performed by these three employees in the Regina Terminal on July 7, 1969 should have been paid at the rate of time and one-half under the provisions of Articles 5.2, 6.3 and 6.4, which read:

> 5.2 Work in excess of forty straight-time hours or five days in any work week shall be considered overtime and paid at the rate of time and one-half time except where such work is performed by any employee due to movement from one assignment to another, other than at the instance of the Company, or to or from any extra or laid-off list or where rest days are being accumulated under Clause 6.2.3.
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> NOTE: The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work; and for spare or unassigned employees shall mean a period of seven consecutive days starting with Monday.
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> 6.3 Employees, if required to work on regularly assigned rest days, except when these are being accumulated, shall be paid on the actual minute basis at the rate of time and one-half time with a minimum of two hours for which two hours' service may be required.
>
> 6.4 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 not otherwise have forty hours of work that week in all other cases work shall be performed by the regular employee.

The Company contends that these three employees were properly compensated at the warehouseman-driver's straight time rate of pay for the work performed on July 7, 1969 and that Articles 5 and 6 have no application in this instance.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	**(SGD.) C. C. BAKER**
GENERAL CHAIRMAN	**DIRECTOR, PERSONNEL AND INDUSTRIAL RELATIONS**

There appeared on behalf of the Company:

C. C. Baker – Director, Personnel & Industrial Relations, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto
G. Moore – Vice-General Chairman, Toronto
F. C. Sowery – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievors, who held full-time mileage-rated assignments, had as their rest days Sundays and Mondays. They were offered, and accepted, extra unassigned work on Monday, July 9, 1969. The result of this was that they worked in excess of forty hours or five days in the work week. If Article 5 of the collective agreement applies in this case, then they would be entitled to be paid at overtime rates for this work.

It is the company's contention that Article 5 does not apply, because it expressly excludes mileage rated employees from its application. The matter of hours of work of mileage-rated employees appears, naturally enough, to have been the subject of special provisions in the collective agreement, and as a result, the regular provisions relating to overtime do not apply to such employees. In the instant case, however, the grievors, although they held mileage-rated classifications, were not engaged in such work, but were offered and accepted, work in the terminal. It may be doubted (since Article 6.4 does not apply to mileage-rated drivers) whether the company was under any obligation to offer the grievors this work, although that question is not now before me for determination. The work was, however, offered and accepted. It was not mileage-rated work, and in my view it cannot properly be said that when the grievors performed such work, they did so in the capacity of mileage-rated workers. They seem to have been paid at the warehouseman-driver's straight time rate of pay. In my view, it may be said, generally, that where hourly rates apply, hourly conditions apply. In the instant case, the grievors were working on a sixth day of the week, and accordingly were entitled to payment at penalty rates.

For this reason, the grievance must be allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR