IN THE MATTER OF AN AD HOC RAILWAY ARBITRATION

BETWEEN

ALSTOM
(The "Company")

AND

TEAMSTERS CANADA RAIL CONFERENCE
(The "Union")

Grievance Contesting the Overtime for Mr. Chagnon

Date:	May 3 and September 27, 2023
Arbitrator:	Johanne Cavé

Appearances on behalf of the Company:

I. Campbell	– Counsel, Fasken
B. Subara	– Counsel, Fasken
C. Henripin	– Human Resources Business Partner
Y. Bargache	– Project Manager

And on behalf of the Union:

R. Whillans	– Counsel, Caley Wray
W. Apsey	– General Chairman
M. Tremblay	– TCRC, Division 760
F. Chagnon	– TCRC, Division 760

Heard in person in Montréal on May 3, 2023, and by Zoom on September 27, 2023.

AWARD

1. The grievance concerns the interpretation of an overtime provision. The issue in dispute is whether the Grievor is entitled to overtime pay for all the hours he worked on his scheduled day off, even though he did not work his full regular hours for that work week.

BACKGROUND FACTS

2. The relevant facts are not in dispute.

3. The Grievor is a maintenance employee. His regular work week consists of four days of 10 hours of work, for a total of 40 hours of work per week. This constitutes one of the "normal work week" schedules set out under Articles 39.01 and 39.02 of the Collective Agreement, i.e., four 10-hour shifts or five 8-hour shifts, excluding the 30-minute unpaid meal period. These provisions read:

> 39.01 Normal work week is 40 hours consisting of 5 @ 8'30" or 4 @ 10'30" (consecutive) inclusive of lunch. Schedules shall be agreed upon by the Union. The Parties recognize that Saturday and Sunday are preferred days off and will make every effort to ensure that one or both of these days are included in off days for every assignment. Eight hours or less shall constitute a basic day for which no less than 8 hours pay will be paid at the applicable rate.
>
> 39.02 Employees are entitled to a meal period of thirty (30) minutes unpaid and this period is taken between 3:30 and 5:30 after the start of his shift.
>
> […]

4. During the week of January 24 to 28, 2022 (Monday to Friday), the Grievor was assigned to work on Monday, Tuesday, Wednesday, and Friday (his "regularly scheduled days of work"). The Grievor worked less than his scheduled 10 hours on two days: he worked 9.5 hours on Monday and 8 hours on Wednesday. On both occasions,

the Grievor was late for work and the 2.5 hours of work he missed were not authorized leave. Thus, the Grievor worked a total of 37.5 hours, instead of his scheduled 40 hours. He was compensated for these 37.5 hours, at his regular rate of pay.

5. The Grievor volunteered to work 8 hours on Thursday, January 27, 2022, which was his scheduled day off. The Company paid the first 2.5 hours at the Grievor's regular rate of pay, to complete his regular 40-hour work week. It paid the remaining 5.5 hours at the overtime rate.

6. The issue in dispute is whether the Grievor is entitled to overtime pay for the entire 8 hours he worked on January 27, 2022, as opposed to only 5.5 hours.

THE COLLECTIVE AGREEMENT

7. This case turns on the interpretation of Article 40.01 of the Collective Agreement, which governs overtime for maintenance workers. Article 40.01 stipulates that work is considered to be overtime if it is done (a) outside regular hours of a regular work day, or (b) outside of a regular work week. Article 40.01 reads:

> 40.01 **Any work done outside regular hours of a regular work day** or regular work week is considered overtime and **is paid at the rate of one and a half** times the regular rate of pay rounded up to the next quarter (1/4) hour.
>
> Any leave authorized by this collective agreement is considered to have been worked for the purpose of calculating overtime.
>
> [...]
>
> (Emphasis added)

8. The term "workday" is defined in Article 50 :

> Workday refers to the employee on a day when she or he is expected to work according to her normal work schedule; it is understood that each day

(24- hour period) is deemed to begin at the time of its normal schedule and end at the same time the following day. The normal start and end times can only be changed by mutual agreement between the parties.

THE POSITIONS OF THE PARTIES

9. The Union states that the Company cannot use time worked on an overtime assignment to top up a regular work week to 40 hours before paying the overtime rate. It argues that the Grievor was entitled to claim overtime pay for all hours worked on his scheduled day off, regardless of whether he worked all the hours of his 40-hour work week. In sum, because Thursday, January 27, 2022, was not one of the Grievor's regularly scheduled days of work, he worked "outside regular hours of a regular work day". Therefore, he was entitled to the overtime rate for the entire day, regardless of the number of hours he worked on his regularly scheduled days or the total number of hours he worked that week.

10. Conversely, the Company argues that where an employee has not worked more than 40 hours in a work week, the employee is not entitled to be paid at the overtime rate merely because he worked on his scheduled day off. It is only when the employee either exceeds the length of his regular scheduled shift or works more than 40 hours in a week, that the overtime rate applies.

11. In essence, the parties take a different view of what it means to work outside a "regular work day". For the Company, in the Grievor's case, this only means working more than 10 hours in one day, regardless of whether it is a regularly scheduled day of work or if the Grievor has agreed to work on a scheduled day off. For the Union, Article 40.01 also contemplates overtime in another scenario: where an employee works on a day that is outside his regularly scheduled days of work.

ANALYSIS

12. The Collective Agreement must be interpreted in a way that gives meaning to the parties' intention, having regard for the language of the agreement, the ordinary sense of the words that are used, the broader collective agreement and the labour relations context. When analyzing the words that are used, different words are generally presumed to have different meanings.

13. Article 40.01 provides that overtime is payable for "any" work done "outside regular hours of a regular work day". Applying the principles of interpretation, all of the words used in the provision must be given meaning, including the words "regular hours" and "regular work day".

14. Giving the words used their ordinary sense and considering that different terms are presumed to have different meanings, I find that "regular hours" refers to the hours the Grievor is regularly scheduled to work, meaning his regular 10-hour shift. In keeping with this, "regular work-day" refers to the days the Grievor is expected to work according to his normal work schedule, in this case Monday, Tuesday, Wednesday and Friday. This interpretation is also consistent with the broader Collective Agreement context, most notably article 50 which defines the term "work day" as a day the employee is "expected to work according to his normal work schedule".

15. A relevant principle arises from *Re Domglas Ltd. and United Glass and Ceramic Workers, Local 203, 1984 CanLII 5147 (ON LA)*. In allowing the grievance, the Arbitrator highlighted two situations triggering the entitlement to the overtime rate:

> It is to be noted, as was argued by counsel for the union, that overtime provisions fall into two general categories. In one category are the provisions wherein overtime becomes payable after an employee has worked a specified number of hours in a day or in a week. The other general category of clause relates to the situation where an employee is entitled to overtime pay whenever he works hours outside of the periods of time when he has been scheduled to work.

16. I find these comments relevant to the case at hand.

17. The language of Article 40.01 provides for the payment of overtime for “any” work that is done outside prescribed periods of time. The use of the word “any” is significant. When the provision is considered as a whole, it means that any work done outside the Grievor’s 10-hour shift on his four regularly scheduled days of work attracts overtime pay. Considering the language of Article 40.01, I find that this is the case, regardless of the total number of hours the employee has worked in a given week.

18. In my view, there is nothing in Article 40.01 that restricts the entitlement to the overtime rate to circumstances where the Grievor has worked more than 40 hours in a week. The only way to reach such a result would be to alter or add to the language negotiated by the parties. I have no authority to do so. My only role is to give meaning to the language agreed to by the parties.

19. I note the Company’s concern that employees who have taken unauthorized leave in a given week can make up for the hours missed by volunteering for overtime and benefiting from the overtime rate. However, the issue of unauthorized leave is separate from the interpretation issue that is before me.

20. For these reasons, I find that the Grievor was entitled to the overtime rate for all hours worked on his scheduled day off, on Thursday, January 27, 2022.

21. The grievance is allowed. I remain seized with respect to the implementation of this decision.

Dated at Gatineau, on October 3, 2023.

JOHANNE CAVÉ
ARBITRATOR