

*Cited as:*  
**Caldwell and Arnold Bros. Transport Ltd.**

**IN THE MATTER OF a Wage Recovery Appeal Under Division XVI -  
Part III of the Canada Labour Code  
Between  
J. Bonnie Caldwell Employee, and  
Arnold Bros. Transport Ltd. Employer**

**[1996] C.L.A.D. No. 213**

Canada  
Labour Arbitration

**B.P. Schwartz, Adjudicator**

Heard: Winnipeg, Manitoba, January 20, 1996  
Decision: March 13, 1996

(6 pp.)

**Appearances:**

J. Bonnie Caldwell, Employee.  
Dale White, for the Employer.

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**DECISION**

**1** Ms. Caldwell was employed as a driver for Arnold Bros. Transport Ltd. After leaving its employ, she launched a complaint with respect to unpaid wages in a number of respects. Her complaint was held to be unfounded by an Inspector appointed by Human Resources Development Canada. Ms. Caldwell has appealed that decision.

**2** Most of the issues between the parties with respect to unpaid wages were settled prior to the hearing.

**3** Two issues remained: remuneration for "extra time" and for "extra miles".

**"EXTRA TIME"**

**4** The employer has created a schedule [Ed. note: Please see schedule appended to the end of the decision] that sets out how much time an employee will be deemed to spend on performing various tasks. Picking up a particular item might be deemed a one hour task, even though an employee might actually have spent more or less time in a particular case. The schedule is easy and inexpensive to administer. It also eliminates any incentives for employees to prolong a task in order to make more money out of it.

**5** The employer makes exceptions where, for reasons beyond the control of an employee, a task takes considerably longer than the standard tariff. The employee is expected to report the extra time in a prescribed fashion. The employer will then provide remuneration for the time that was actually and reasonably spent on the task rather than the scheduled time.

**6** Ms. Caldwell recalls the following sequence of events. In one particular case she was unsure about how to report her claim for substantial extra time. She specifically consulted a manager who told her that in the circumstances, and similar ones in the future, she should bring the information directly to his attention. The manager would then make sure she was remunerated. Ms. Caldwell did forward the information to that manager on a number of subsequent occasions. The manager, however, failed to process them.

**7** The employer's basic system on "extra time" seems to be reasonable and fair, both in its substance and procedure. It is understandable that the employer would expect claims for "extra time" to be reported promptly and in a standard manner.

**8** In this case, however, Ms. Caldwell took the trouble to promptly and expressly seek specific instructions on how to deal with certain situations. A manager who had authority in the area gave her the requested instructions and she followed them. In the special circumstances of this case Ms. Caldwell cannot be denied remuneration because she did not follow the standard reporting system.

**9** As an adjudicator, I have been in a position to hear Ms. Caldwell give formal testimony in the presence of the other party. I found Ms. Caldwell to be a credible witness with respect to the "time issue", for the following reasons:

- She provided detailed accounts of the times, places and tasks involved;
- While she was aggressive in pursuing her arguments, Ms. Caldwell appeared to be careful not to exaggerate on factual matters and was prepared to acknowledge when she was uncertain or did not have information on a particular point;
- The employer did not provide any witnesses who contradicted her specific recollections of her conversations with the manager involved.

**10** I should add immediately that Mr. White, on behalf of the employer, was an articulate witness who also impressed me as being honest and careful about the facts. However, he was not a party to Ms. Caldwell's conversations with the manager and I have no basis for disbelieving her account of them.

**11** In Appendix "A" to this decision, I have attached Ms. Caldwell's detailing of the trips that involved "extra time". The amount of "extra time" involved is 35 hours. The rate of remuneration was \$7.90/hour. Ms. Caldwell did not make any request with respect to the payment of pre-judgment interest on these unpaid wages. Accordingly, with respect to "extra time", I would order that the employer pay Ms. Caldwell an additional \$276.50.

### "EXTRA MILES"

**12** After much discussion, it finally emerged that the parties actually agree on the basic principles that should be applied to -the payment for "extra miles".

**13** The employer uses a fixed schedule, the Rand-McNally system, to determine the distance that must be travel led on a particular route between cities.

**14** The employer does not depend on actual odometer readings to determine the length of a trip. These readings would have a substantial margin of error and would create additional complexity from the point of view of record-keeping, paying drivers and providing estimates to customers.

**15** There are different routes, of course, between different cities. As long as the driver made a reasonable decision to take a particular route, the company will pay remuneration based on mileage according to the Robinson-McNally figure for that particular route. If the employer is not told which route was actually taken it will assume that the shortest one was taken.

**16** Ms. Caldwell identified five trips in which there was a very substantial difference (around 100 miles or more) between her odometer reading and the Rand-McNally figure used. As I understand it, in each of these five cases, the Rand-McNally figure was based on the shortest route rather than the actual route.

**17** Ms. Caldwell admits that in some of the trips the actual routes may not be shown on her trip card. She says the employer was not clear about how actual routes should be reported. After making some inquiries of employees, she started to note the actual route on her trip cards as well as her logs.

**18** With respect to these five trips, I proposed the following resolution of this case:

- Ms. Caldwell will by March 15, 1996, provide Mr. White with adequate documentation to show which route was used. The route might be shown on her trip cards, or it might be established by using her logs or some other credible documentation that she can produce;
- Mr. White will determine, under the Rand-McNally system, the appropriate mileage figure for these routes;
- The employer will then pay Ms. Caldwell whatever additional remuneration follows for any "extra miles".

**19** Remuneration for mileage is, as I understand it, \$0.18 a mile.

**20** As I noted at the hearing, the employer is only obliged to consider extra mileage compensation with respect to the five specific trips, and no others.

**21** I found Mr. White to be co-operative and professional throughout these proceedings and I am confident that he will make an accurate determination of the amount of remuneration involved and ensure that Ms. Caldwell is paid promptly.

**22** Just in case some problem emerges, however, I would retain jurisdiction in this matter. That is, if for any reason the precise amount cannot be determined and paid in the near future, either party can ask me to hold a further hearing and nail down the precise amount myself.

**23** Subject to the point just made, this award should settle all issues between the parties concerning unpaid wages.

24 I understand there may be some other litigation or proceedings involving the parties. I have no jurisdiction, knowledge or opinion concerning any matters apart from the two specific issues discussed in this award.

25 I would again like to thank Ms. Caldwell and Mr. White for their co-operation.

\* \* \* \*

J.B. Caldwell & Arnold Bros. Transport Ltd. (ABT)

Details of Claim - pg. 2

5.) WAGES FOR HOURS WORKED

		Hours worked	Hours paid
Trip No.	810883	9	3 1/2
	810923 (4 drops)	10 1/2	2
	812554 (7 drops)	9 1/2	3 1/2
	816418 (5 drops)	13	3
	817150 (2 drops)	7	2 1/2

Trip No.810883 - My partner and I spent 9 hours getting this load ready to go, but were only paid 3 1/2 hours for the time we spent actually loading the trailer.

Trip No.810923 - There were 4 drops. We were only paid for the 3 interim drops and not for the 1 1/2 hours for the final unloading, or for returning to the yard to drop the trailer. (See 1) c) Conditions of Pay on back of Trip Card.)

Trip No.812554 - There were 7 drops. We were only paid for the 6 interim drops and not for the 1 1/2 hours for the final unloading, or for returning to the yard to drop the trailer.

Trip No.816418 - There were 5 drops. We were only paid 1/2 hour for each drop, instead of 1 1/2 hours for delivery at final destination, and 1/2 hour extra for each of the 4 interim drops, and returning to the yard to drop the trailer.

Trip No.817150 - As you can see from this trip, we are supposed to be paid 1 1/2 hours for the final delivery plus 1/2 hour for each additional drop. ABT did not pay me for the 1/2 hour spent actually unloading at Lachine, P.Q., as noted on back of my Trip Card (2)e) Conditions of Pay (Extra Hours).

However, this is not exactly the point. This method of payment is arbitrary and does not necessarily pay for the actual time involved in making these deliveries, as indicated in my letter of 25 June 1993.

I request wages for total hours worked for these 5 trips.

qp/s/smc