CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 16

Heard at Montreal, Monday, November 15th, 1965

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (SD & PC DEPT)

and

THE BROTHERHOOD OF RAILROAD TRAINMAN

DISPUTE:

In declining payment of statutory holiday pay in respect of January 1st, 1965, to Waiter S. Harrow, the Brotherhood alleges the Company has violated the provisions of Article 16, Section 5, third paragraph, of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

Waiter Harrow was a regularly assigned employee working out of Winnipeg, his assigned run being due out the evening of December 28th, 1964.. On that day he had his wife call the Platform Office and report he would not, due to illness, be available to protect his assignment. On January 5th, 1965, the date his assignment was next due out, he reported he was available for duty. Waiter Harrow was, therefore, not available for service from December 29th, 1964, to January 4th, 1965, both dates inclusive. He subsequently requested and was granted annual vacation payment for January 1st, 2nd, 3rd and 4th, 1965.

Waiter HarroW claimed statutory holiday paynent for New Year's Day, January 1st, 1965. Payment of claim was declined by the Compnay on the grounds that under the provisions of Article 16, Section 5, third paragraph, Waiter Harrow did not fulfill the qualifications required to entitle him to holiday pay for January lst, 1965.

ARTICLE 16, SECTION 5, PARAGRAPH 3, READS:

> "In order to qualify for pay for any one of such holidays, an employee must have rendered 520 hours' cumulative service within a twelve-month period since the last date of employment and must, immediately preceding and immediately following such holiday, have fulfilled the requirements of his assignment, or have been in service or available for service from the spare board. An employee absent account vacation with pay shall be con- sidered as having rendered compensated service on such vacation days for the purpose of the application of this Section. An employee on properly authorized leave of absence immediately preceding or immediately following a holiday, but not both, who renders compensated service on his assignment, or is in service or available for service from the spare board, immediately preceding or following the holiday, shall be considered as eligible for pay for the holiday if otherwise

qualified Should an employee render compensated service on his assignment, or be in service or available for service from the spare board, immediately preceding a holiday and be prevented by injury, other than one entitling him to receive Workmen's Compensation payments, from working on his assignment, or being in service or available for service from the spare board, immediately following the holiday, he shall be considered eligible for pay for the holiday if otherwise qualified."

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. R. BROWNE	(Sgd.) THOS. P. JAMES
General Chairman	MANAGER, S.D.P.C. & N.S.

There appeared on behalf of the Company:

T. P. James	Manager, S.D., P.C. & N.S. - C.P.R. Montreal
L. R. Scarratt	Asst. to Manager, S.D., P.C. & N.S. - C.P.R. Montreal

And on behalf of the Brotherhood:

J. R. Brown	General Chairman, B. R. T. Montreal

AWARD OF THE ARBITRATOR

The grievor, a waiter regularly assigned working out of Winnipeg on the "Canadian" trains 1 and 2, was due out on his assignment on the evening of December 28, 1964. On that day he had his wife call the platform office and report that because of illness he would not be going on his run.

On January 5, 1965, the day the grievor's assignment was again due out, he telephoned to report he was available. Subsequent to his return to duty on Jaruary 5th, he requested and was granted four days annual vacation with pay from January 1 to 4, 1965, inclusive. The grievor subsequently claimed statutory holiday payment for New Year's, on the basis that by being on vacation on January 1, he qualified for such payment.

Article 16, Section 5, paragraph 3 of the Agreement reads:

> "In order to qualify for pay for any one of such holidays, an employee must have rendered 520 hours' cumulative service within a twelve-month period since the last date of employment and must, immediately preceding and immediately following such holiday, have fulfilled the requirements of his assignment, or have been in service or available for service from the spare board ....."

There was no dispute that the grievor had 520 hours cumulative service within a twelve-month period However, it was also clear he

was not present to fill the requirements of his assignment "immediately preceding and immediately following such holiday."

There is nothing in the provision recognizing absence because of illness as constituting a waiver to this requirement. The history of such a provision in collective agreements establishes this requirement as an attempt to control employees' lengthening the single holiday by absence either the day before or the day after. Illness was found to be the most common excuse for such absences. For this reason, some industrial agreements contain a qualification permitting a verified illness being accepted as qualification for holiday pay. That qualification of course, does not appear in this agreement.

The next sentence in paragraph 3 reads:

> "An employee absent account vacation with pay shall be considered as having rendered compensated service on such vacation days for the purpose of the application of this section ....."

This undoubtedly is to permit absence while on vacation to be counted in computing the required 520 hours of cumulative service. It is not designed to indicate an intention that if a holiday occurs during an authorized vacation, the employee would be entitled to a further day's vacation with pay, or an additional day's pay, as sometimes appears in industrial agreements.

The next sentence is of deternining importance to this claim. It reads:

> "An employee on a properly authorized leave of absence immediately preceding or immediately following a holiday, but not both, who renders compensated service on his assignment, or is in service or available for service from the spare board, immediately preceding or following the holiday, shall be considered as eligible for pay for the holiday if otherwise qualified."

For the grievor Mr. Browne referred the Arbitrator to Article 16, Section 1, Clause (e), reading in part:

> "Time off duty on account of bona fide illness, injury, to attend committee meetings, called to court as a witness, or jury duty, not exceeding a total of 60 days in any calendar year, shall be included in the computation of service for vacation purposes."

Mr. Browne contended that because a leave of absence on account of a bona fide illness is recognized for vacation purposes, it should be accepted as the true interpretation of the intent in the statutory boliday rule.

For the Company, Mr. James urged that the only requirement met by the grievor to qualify him for this holiday was the fact he had accumulated the required number of hours of service prior to the date in question. He emphasized he had not fulfilled the requirements of

his assignment immediately preceding and irmediately following the holiday. His absence because of illness was not an authorized leave. An authorized leave he declared, is one which has been requested and granted prior to the commencement of the period of absence. What occurred in this instance was that the grievor had "booked sick". Nothing in the provision contemplates this act as one qualifying him for holiday pay.

At first glance, it would appear that the granting by the company of a leave of absence for vacation purposes for a period that included the holiday in question should be considered an "authorized leave". A study of the provisions, however, provides this conclusion untenable. The third paragraph of Section 5 deals with a "properly authorized leave of absence". It states that where an employee is on such a leave immediately preceding or following the holiday but not on both "who renders compensated service on his assignment.....immediately preceding or following the holiday, shall be considered as eligible for pay for the holiday if otherwise qualified."

Obviously, while on an authorized leave "immediately following this holiday, the grievor had not fulfilled the other requirement to "render compensated service on his assignment...immediately preceding or following the holiday". An absence because of illness does not bring him within the negotiated terms contained in the Article concerning statutory holidays.

For these reasons this claim must be denied.

J. A. HANRAHAN
ARBITRATOR