CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 38

Heard at Montreal, Monday, June 13th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Re: Application and interpretation of Section 5, sub-section 1 of Article 40-A of the collective agreement, covering general holidays, reading as follows:

"5.(1) An employee qualified under Section 2 hereof and who is not required to work on a general holiday shall be paid an amount equal to his earnings, exclusive of overtime, for the last tour of duty he worked prior to the general holiday, provided that in the case of an employee paid at passenger rates, if such amount is less than the equivalent of 150 miles at the rate applicable to passenger service, the equivalent of 150 miles shall be paid."

JOINT STATEMENT OF ISSUE:

Claims were submitted by the crew on passenger assignment, trains 213 and 214, operating between Farnham and Montreal, for earnings in their assignment on the last tour of duty worked prior to the general holiday. These claims were reduced by the Company, in each instance, by 80 miles, representing the overtime portion of the tour of duty which was disallowed.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD) J. I. HARRIS GENERAL CHAIRMAN	(SGD) A. M. HAND GENERAL MANAGER - ATLANTIC REGION

There appeared on behalf of the Company:

R. Colosimo	- Supvr. Personnel & Labour Relations, CPR, Montreal
F. G. Firmin	- Asst. to Vice-Pres. Atlantic Region, CPR, Montreal

And on behalf of the brotherhood:

J. I. Harris	- General Chairman, BRT, Montreal
W. P. Kelly	- Vice-President, BRT, Ottawa

AWARD OF THE ARBITRATOR

The Arbitrator had a comprehensive review of the circumstances leading to this grievance in the brief presented by the representative for the Brotherhood. This indicated that prior to the proclamation of the Canada Labour (Standards) Code, railway employees in the running trades received no premium pay or any consideration in connection with Statutory or General Holidays.

The Code was passed by the House of Commons on February 22, 1965, with Part IV, entitled "General Holidays" to become effective on July 1, 1965.

Because of the complaints made by the Railways as to the difficulty of administering the general holiday section in calculating wages an employee would have earned at his regular rate of wages for his normal hours of work, when men in road service especially in unassigned freight, worked irregular hours on the mileage systme with no set "normal hours of work", on June 25th, 1965, the Governor-in-Council issued Regulation 11 pertaining to the Code. It read as follows, in part:

> "For the purposes of sbusections (2) and (3) of section 29 of the Act, if an employee's hours of work differ from day to day or if his wages are calculated on a basis other than time, the wages he would have earned at his regular rate of wages for his normal hours of work may be deemed to be
>
> a) the average of his daily earnings exclusive of overtime for the days he has worked in the four-week period immediately preceeding the general holiday, or
>
> b) an amount calculated by a method agreed upon under or pursuant to a collective agreement."

Recognizing the difficulties inherent in 11(a), the parties decided to take advantage of the alternative provided in subsection (b) and entered into negotiations that resulted in the execution of an agreement that became effective September 1, 1965. In included this provision:

> "5 (a) (c) A Conductor, Baggageman or Brakeman shall be paid an amount equal to his earnings, exclusive of overtime, for the last tour of duty he worked prior to the general holiday, provided that in the case of an employee paid at passenger rates, if such amount is less than the equivalent of 150 miles at the rate applicable to passenger service, the equivalent of 150 miles shall be paid."

Before completion of the negotiations Mr. Kelly, on behal of the Brothrhood, had communicated with the Deptuy Minister of Labour, advising that both railways insisted that in determining the amount of wages due, whether they be for a four week period or for the last shift or trip performed, that overtime be excluded.

One paragraph of Mr. Kelly's letter explained that position taken by

the Brotherhood:

> "It is the contention of the Brotherhood that where overtime is paid at a premium rate of at least one and one-half times the regular rate, the overtime should be excluded. It is our further contention, however, that where overtime is paid at straight time rates which is the case with the running trades on many assignments, including regularly scheduled assignments, the overtime whould not be excluded in calculating the entitlement to the employee for the general holiday, whether it be over a four week period or the shift or trip worked immediately prior to the general holiday."

Then followed examples of the difficulties encountered in coputing overtime on different types of service.

Here it is to be noted that the grievance presented in this matter concerns what is termed "short Turn-Around Passenger Runs". With reference to this type of service the Brotherhood's representative stated in his letter to the Deputy Minister:

> "In short turnaround passenger service, crews are paid overtime for all time actually on duty or held for duty in excess of 8 hours (computed on each run from the time required to report for duty to the end of that run) whithin 9 consecutive hours and also for time in excess of 9 consecutive hours computed continuously from the time first required to report until final release at end of last run. The 'overtime' in this case is at a stipulated rate which is actually less than the straigh time rate."

The represenative for the Brotherhood claimed that during negotiations it was the mutual purpose of the parties to incorporate the principles of the Act into the language of the collective agreement. The last tour of duty worked prior to the general holiday was to be determing factor. Wages "exclusive of overtime" was a term incorporated in the agreement, with each party placing a different interpretation upon the meaning to be assigned those words.

On the date the agreement was signed the Brotherhood forwarded a letter to the proper officials of both railways emphasizing that "overtime" referred to in Section 5 (1) (c), in their opinion, was only that time paid for at a rate of at least one and one-half times the regular rate.

The claim presented deals with a passenger assignment operating in short turn-around service between Farnham and Montreal, Quebec, a distance one way of 45 miles. That assignment concerns trains 213 and 214 which were created by a bulletin and the scheduled hours of work which the crew performs 7 days a week appears in the general timetalbe as follows:

> "Train #213 - Leaves Farnham @ 5:35 am
> arrives @ Montreal @6:58 am
>
> Train #214 - Leaves Montreal @ 4:40 pm
> - arrives @ Farnham @ 6:10 pm

Total hours of trains scheduled - 12 hrs. 35 min
Total time on duty - 13 hrs. 15 min"

An additional forty minutes must be added to the time specified created by a requirement that the crew report 30 minutes in advance of schedule and remain on duty in order to put their train in the yard and clear of the mainline.

The representative of the Brotherhood maintained that the crew making the claim works a normal work day of 13 hours and 15 minutes, day in and day out. The contention was that the intent and principle of the General Holiday Code was to ensure that an employee not working on a general holiday would recieve "wages he would have earned at his regular rate of wges for his normal hours of work."

The crux of this submission is that the term "exclusive of overtime" applies to time worked over and above the normal hours worked on the assignment.

The representative for the Company urged there is no ambiguity in the provision 5 (1) (c), mutually agreed upon by the parties; that apart from any reservation in the minds of those representing the Brotherhood with respect to the proper interpretation to be given that term, it is the language that was inserted in the agreement that must govern.

It was stated that on the last tour of duty preceding the holiday on November 10, for which the claim is amde, the crew in question reported for duty at 6:05 a.m. and completed their trip at 7:10 p.m.; that after 3:05 p.m. that day they were paid on an overtime basis as provided in the collective agreement. This was indicated in a trip ticket produced to the Arbitrator.

Here is to be underlined that Article 2 of the collective agreement was not amended by the agreement entered into on September 1, 1965. It provides, in part:

> "Trainmen on short turnarounds . . . shall be paid overtime for all time actually on duty or held for duty in excess of eight hours."
>
> Subsection (b) of that Article provides:
>
> "Overtime shall be computed for each employee on the basis of actual overtime worked, or held for duty at the following rates per hour . . . "
>
> These are then set out.

Article 1 (a) defines a basic day as being 150 miles or less. The members of this crew were paid on that basis.

Consider the words in 5 (1) (c)

> "A conductor, baggageman or brakeman shall be paid an amount equal to his earnings exclusive of overtime . . . "

. . . Emphasis added.

The parties did not agree upon any special definition to be applied that term. Because there was no amendment to Article 2 of the collective agreement that term has been defined for the crew in question as the actual overtime worked or held for duty beyond the basic day.

This brings us back to the alternative (b) provided in Regulation 11, that these parties chose to invoke in mutually agreeing upon terms of the agreement executed on Septebmer 1, 1965. It provides:

> "(b) An amount calculated by a method agreed upon under or pursuant to a collective agreement."

Manifestly, because Article 2 was not amended by deleting all reference to overtime, and the term "exclusive of overtime" not given a qualifying definition in the agreement of September 1, 1965, the parties exercised the choice given them in Regulation 11 (b) and mutually determined that those not working a general holiday should be paid "exclusive of overtime" what they would have earned at their regular rates of wages for their normal hours of work. They decided that should be "deemed to be", according to (b) "an amount calculated by a method agreed upon under or pursuant to a collective agreement." As stated, for these grievors "overtime' remains in Article 2 of this collective agreement an existing factor for the ordinary computation of their wages. What they are to receive for a general holiday not worked is exclusive of that factor.

To read anything additional into this provision would be using arbitration as a means for extending the agreement which the parties have made rather than interpreting and applying its existing provisions.

For these reasons I find there was no violation of the terms of the agreement in the payment made members of this crew for the holiday in question.

J. A. HANRAHAN
ARBITRATOR