

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 58

Heard at Montreal, Monday, March 13th, 1967

Concerning

CANADIAN NATIONAL RAILWAYS (PRAIRIE REGION)

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Trainman W. A. Guthrie of Winnipeg, for general holiday pay, January 1, 1966.

JOINT STATEMENT OF ISSUE:

Trainman W. A. Guthrie, who was in unassigned chain gang service, was ordered at Rivers, Manitoba for 21:20 December 31, 1965, to work on freight train 414 to Winnipeg. He went off duty at Winnipeg at 0225, January 1, 1966, and booked sixteen hours rest (until 1825). At 2315, January 1st, when he was called for Train Second 1, which was ordered to leave Winnipeg at 0115, January 2nd, he booked unfit for duty. Trainman Guthrie submitted time claim in the amount of 161 3/4 through freight miles for general holiday pay, January 1, 1966 under the provisions of Article 5, Rule 75-A of the Trainmen's Agreement.

The Company declined payment of the claim.

FOR THE EMPLOYEES:

(Sgd.) H. C. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	Labour Relations Assistant, C.N.R., Montreal
A. D. Andrew	Senior Agreements Analyst, C.N.R., Montreal
A. J. DelTorto	Labour Relations Assistant, C.N.R., Montreal

And on behalf of the Brotherhood:

H. C. Walsh	General Chairman, B.R.T., Winnipeg
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AWARD OF THE ARBITRATOR

Prior to the coming into effect of the Canada Labour (Standards) Code, road service employees on Canadian railways did not have statutory-holiday-with-pay benefits. On July 1, 1965, the "General Holidays" part of the Code came into effect, conferring entitlement to eight general holidays with pay annually, upon road service employees.

Following this, on September 15, 1965, a Memorandum of Agreement was enacted and embodied in the collective agreement governing trainmen in western Canada, as Article 5, Rule 75-A.

The pertinent part of that enactment is Section 2 (b) as a qualifying requirement for such pay and reading:

"Unless cancelled, must be available for duty on such holiday if it occurs on one of his work days excluding vacation days."

Section 6 of Rule 75-A is also to be considered:

"Shifts or tours of duty commencing between 12:00 midnight and 11:59 p.m., both inclusive, on the general holidays specified in Section 1 of this rule shall be considered as work on that holiday."

As indicated in the Joint Statement of Issue, and urged by the representative for the Brotherhood, this employee on arrival at Symington booked 16 hours rest until 1825K; that therefore he was available for duty from that time for the remainder of January 1, 1966. It was submitted and not disputed that in the intervening five and a half hours he was not called. The fact that at 2315 K he was called for service commencing at 115 K on January 2, 1966, and booked unfit for duty for the next day, it was claimed, could not be taken to mean he would not have taken advantage of a call that would give him holiday pay for January 1.

Stressed, too, by the representative for the Brotherhood, was the fact that at the time in question no limitation upon hours of rest was in effect. Whereas by an amendment contained in a memorandum of agreement signed May 2, 1966, this restriction was placed upon the period rest could be claimed in order to qualify for holiday pay:

"Section 2 (b): An employee under rest on a holiday will be considered available if no more than 12 hours rest has been booked."

It was admitted by the Company that the holiday, January 1, was a work day for Guthrie, because of the manner in which chain gangs operate. There was no dispute that those in such service face the possibility of receiving a call to work at virtually any hour of the day or night. They are, however, permitted to judge their own physical condition and can choose to withhold their services when they feel they would like rest or consider themselves "unfit for

duty".

Analyzing the grievor's availability, which the Company representative urged was of pivotal importance, it was claimed he had demonstrated on two separate occasions that he was not available on the holiday - the first time by booking rest; the second time by booking unfit.

Although it was suggested that because the grievor had worked until 0225 on January 1, 1966, he was entitled to holiday pay, this would be precluded by the qualification contained in Section 6 of Rule 75-A that only "shifts or tours of duty commencing between 12.00 midnight and 11.59, both inclusive, on the general holidays shall be considered as work on that holiday."

The weakness in the Company's position is indicated by the admission that in an emergency, when no other man could be obtained, a trainman "under rest" could be called. It was suggested that is a situation that would occur very rarely and therefore a remote possibility.

This being so, had such a situation arisen the grievor must be looked upon as one subject to call even during the then unrestricted term of hours for which rest could be booked.

There is the further fact in favour of the grievor that from 1825 for the balance of the holiday he was apparently available for a call other than one concerning an emergency. No test of his availability for work on the holiday was made during that intervening period.

I do not consider such a test can be established by a call that came some five hours after he had finished his rest period, and that being a call for duty on the following day.

In my opinion the amendment restricting the number of hours that an employee is entitled to book off for rest on a holiday must be considered as granting the Company the benefit of a longer period in which to permit an availability test during the hours left in the holiday. As stated, at the time in question no such limitation was in effect.

For these reasons I cannot find it has been established that the grievor was not available for duty on the holiday from the period when he concluded his rest period until he received the second call, that was not for work on the holiday but on the next day.

For these reasons I find the grievor should be paid the appropriate sum due him as holiday pay?

J. A. HANRAHAN
ARBITRATOR