CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 84

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (PACIFIC REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Train Baggageman W. C. Boyd, Calgary, for miles reduced from his monthly guarantee claims for the months of January, May and November, 1966 account General Holicay pay being used in making up monthly guarantees.

JOINT STATEMENT OF ISSUE:

Train Baggageman Boyd submitted claims for 73, 347 and 484 miles for the months of January, May and November, 1966 respectively, nthe number of miles he was short of the monthly guarantee of 4,594, miles in each month. A General holiday had occurred in each of these months and he was paid an amount equivalent to 150 miles for each holiday. Such General holiday payments were applied against the monthly guarantee.

The Brotherhood contends that the Company, in using a General Holiday payment to make up a monthly guarantee has violated the provisions of Article 3, Clause (c), which reads:

> "Mileage made by regularly assigned passenger crews other than their regular trips on their assigned runs will not be used to make up their monthly guarantee. Overtime, switching, initial and final terminal time will not be used to make up the monthly guarantee."

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD) S. McDONALD GENERAL CHAIRMAN	(SGD) R. S. ALLISON GENERAL MANAGER - PACIFIC REGION

There appeared on behalf of the Company:

J. G. Benedetti	- Supervisor Personnel & Labour Relations, C.P.R., Vancouver
C. F. Parkinson	- Labour Relations Assistant, C.P.R., Montreal

And on behalf of the Brotherhood:

R. T. O'Brien - Vice Chairman, B.R.T., Calgary

AWARD OF THE ARBITRATOR

In this matter the Brotherood first directed attention to Article 3, Clause (a), pertaining to Passenger Monthly Guarantees reading as follows:

"(a) Regularly assigned passenger trainmen who are ready for service the entire month and who do not lay off of their own accord, shall receive not less than the monthly guarantee provided for in Article 1."

Article 3, Clause (c) provides:

"Mileage made by regularly assigned passenger crews other than their regular trips on their assigned runs will not be used to make up their montly guarantee. Overtime, switching, initial and final terminal time will not be used to make up the monthly guarantee."

Reference was also made to a Memorandum of Agreement between the Canadian Pacific Railway Company and its conductors, baggagemen and brakemen employed on the Prairie and Pacific Regions represented by this Brotherhood, concerning General Holidays. It is known as Article 46. Nothing in it makes reference to its requirements being available for the purpose of making up the monthly guarnatee.

The Brotherhood pointed to the fact that Article 7 provides payment of a montly sum of money to passenger trainemn who are required to assist in the handling of less than carload merchandise from the station to the car door. As well, Article 8 also provides payment of a monthly sum of money to Train Baggagemen handling Government Mail. In neither of these Articles is it stated that such payments will not apply against monthly guarantees but as they are not payments for road mileage run on regularly assigned runs, they cannot, nor have they ever been applied against monthly guarantees.

It was contended for the Brotherhood that passenger monthly guarantees are intended to and do relate only to the actual road miles run by passenger Trainmen on their regular trips on their assigned runs, they cannot, nor have they ever been applied against montly guarantees.

It was contended for the Brotherhood that passenger monthly guarantees are intended to and do relate only to the actual road miles run by passenger Trainmen on their regular trips on their assigned runs, and payment for a General Holiday does not come within that category.

It was urged that Section 5 (1) of Article 46 relating to General holidays, providing that an employee 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, is not expressed in terms of a minimum day's pay or so many miles, but is definitely to be an amount of money

adjustable to conform with previous earnings. Here it was stressed that such previous earnings would often contain some form of time payment converted to miles and could embrace money allowances for handling less than carload merchandise or government mail. Also it could be based on mileage made by regularly assigned passenger crews on trips other than their regular trips on their assigned runs or include extra mileage made on detoured movements.

For the Company it was submitted that Baggageman W. C. Boyd is regularly assigned to Trains 1 and 2 between Calgary, Alberta and Field, B.C. a distance of 137 miles in each direction. As such he works in one direction between these points each day of the month. Normally he does not attain the monthly guaranteed mileage specified in Article 1, Clause (a), Paragraph 4 and is paid constructive miles representing the difference between the mileage earned, exclusive of the specified exceptions and the monthly guarantee.

It was the principle contention for the Company that premium payments in respect of a General Holiday are not one of the specified payments that will not be used to make up the monthly guarantee and, therefore, can be applied against the monthly guarantee. In other words, that payment made in respect of a General Holiday is a premium payment in an agreed amount and is not for mileage made by a trainman or crew. It was urged in support of this reasoning that Article 46, Section 5, Subsection (1) clearly specifies that an employee shall be paid "an amount equal to his earnings . . . exclusive of overtime", of the tour of duty, or trip worked prior to holiday, and that such payment is not in respect of a trip made; it is a premium payment in respect of the General holiday.

In my opinion the parties have determined this question by the enactment of Article 3, Clause (c) in which they spell out those payments that will not apply to make up the monthly guarantee. In contains no reference to Holiday Pay. This is a perfect example for the application of the principle that the express mention of one thing implies the exclusion of another.

Knowing of the existence of Article 3 (c) at the time the Memorandum of Agreement was negotiated concerning holidays, effective September 1, 1965, that was the time to exclude holiday pay from the monthly guarantee, if the parties desired that to occur.

Not having done so, this claim must succeed. Adjustments flowing from this finding should be made forthwith.

(SGD) J. A. HANRAHAN
ARBITRATOR