CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 91

Heard at Montreal, Tuesday, November 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (ATLANTIC REGION)

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Yard Foreman H. E. Turner for 8 hours, less 3 hours which is the difference between what he was allowed and the basic day under the provision covered in Article 42, Rule 2, Clause (a).

JOINT STATEMENT OF ISSUE:

Yard Foreman: Turner reported for duty at Mile End at 11:00 p.m., September 9th, 1966 for his regular assignment bulletined to work 11:00 p.m. to 7:00 a.m. At approximately 1:00 a.m., September 1Oth, this man sustained an injury to the head which prevented him from continuing on duty

Claim was submitted for eight (8) hours pay, which was reduced and allowed on the basis of three (3) hours, which represents the lapsed time from commencement of shift to time booked off. The Brotherhood submitted claim on the basis of the provision of Article 42, Rule 2, Clause (a) of the Collective Agreement for the difference between the eight hours claimed and the three hours allowed. Payment was declined by the Company.

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	Supervisor Personnel & Labour Relations, C.P.R.,Montreal

And on behalf of the Brotherhood:

J. I. Harris	General Chairman, B.R.T., Montreal
L. Safnuk	Vice-Chairman, B.R.T., Sudbury, Ont.

AWARD OF THE ARBITRATOR

As indicated this employee commenced work on his regular assignment at 11:00 p.m. After having been on duty approximately one hour and five minutes he was injured. He was then taken to a hospital for medical attention and after release from the hospital did not return to his employment. A replacement was called to carry on his ordinary duties. The grievor was paid for three hours work. The claim, as indicated, was for eight hours pay.

Portions of the Agreement and Rules relied upon by the Brotherhood are:

> "Rule 2, Clause (a), reading in part:
>
> 'Eight hours or less shall constitute a day's work.'
>
> Rule 1, Clause (c), reading, in part:
>
> 'A work week of forty hours is established consisting of five consecutive days of eight hours each....'
>
> Clause (e)
> 'All regular or regular relief assignments for yardmen
>
> 'shall be for five consecutive days per work week of not less than eight consecutive hours per day, except as otherwise provided in this agreement,'
>
> Finally, Rule 17 (a), reading in part:
>
> 'A regularly assigned yardman who does not lay off of his own accord will be paid not less than the number of days in the month, less the bulletined days off of the assignment and statutory holidays...."

The representative for the Brotherhood contended there was no substance to the Company's contention in this matter that Rule 2 (a) has no application in instances of this nature or that it contemplates an employee being available for service throughout the tour of duty.

In support of this contention the Arbitrator was referred to a decision by the former Canadian Railway Board of Adjustment, in its Case No 545 in which a claim for a full day for an employee unable to complete that tour of duty because of an accident sustained on the railway was upheld.

No reasons were given for this decision. It is of interest, however to note that this matter concerned a dispute between the Brotherhood of Railroad trainmen and the Canadian National Railways (Central Region), whose agreement contained this provision:

> "Article 72, Rule (b):
>
> Trainmen prevented from completing a trip or day's work due to illness, will be paid for actual time on duty or mileage made up to the time relieved from duty. Trainmen relieving such men will be paid in accordance with the provisions of Articles 2 or

9."

Without reasons being given, it would not be unreasonable to conclude that the Board at that time decided because the parties had negotiated such a provision, in which a trainman prevented from completing a trip because of an accident had not been concluded, such a qualification was not intended to apply to him. No such provision appears in the agreement under consideration.

The representative for the Brotherhood also referred the Arbitrator to correspondence he had with the General Managcr of the Canadian Pacific Railway, Eastern Region, in 1965, concerning a claim made on behalf of an employee who had suffered an injury during his tour of duty on the Parry Sound subdivision. This had resulted in payment of an amount making up a minimum day, but only with this statement by the General Manager, in his letter of January 27, 1965:

> "After giving full consideration to the circumstances surrounding this claim, I am arranging payment on the understanding that this will not create a precedent."

The representative for the Company submitted that Rule 2, Clause (a) providing that eight hours or less shall constitute a day's work, is intended as a deterrent to the Company establishing yard assignments for less than an eight hour shift; that it requires minimum payment of eight hours where, for service requirements the Company releases an assignment before completion of the eight hours.

It was urged that payment of the minimum day, however, contemplates an employee being available for service for a full tour of duty. This particular employee not being able to complete his shift, it was claimed, was not entitled to be paid for the hours he did not work.

The important provision applying to this claim, in my opinion, is the Guarantee Provision contained in Article 17, reading,

> "(a) A regularly assigned yardman who does not lay off of his own accord will be paid not less than the number of days in the month....."

This provision obviously must be read in conjunction first with Rule 2, Clause (a), "Eight hours or less shall constitute a day's work." In other words the Company has the right to expect that if required an employee will work an assigned eight hours on any day of his regular work week. If he does the provision applies. If he does not, through no action of the Company but because of a consequence "of his own accord", it would have no application.

In the circumstances described, the employee was unable to continue performance of his duties for the full eight hours. This did not involve any contributory cause on the part of the Company. The misfortune of the accident necessitated the employee to decide, of his own accord, that he was unable to continue for the eight hours required. In my opinion, therefore, the guarante with its qualification, does not apply to his benefit.

For these reasons this claim must be denied

J. A. HANRAHAN
ARBITRATOR