CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 170

Heard at Montreal, Tuesday, September 9th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of 204 and 128 miles for General Holiday pay for Remembrance Day and Christmas Day respectively during 1967, in addition to the monthly guarantee, in favour of Locomotive Engineer J. Drushka of Mirror, Alberta.

JOINT STATEMENT OF ISSUE:

During the months of November and December 1967, Engineer J. Drushka was on an assigned run which produced less in earnings than 3,000 miles per month as provided for under Article 3.23 - Monthly Guarantee For Assigned Runs.

The assignment did not operate on Remembrance Day and Christmas Day 1967. Under Article 6.63 - General Holidays - Engineer Drushka was entitled to General Holiday pay represented by 204 and 128 miles respectively for Remembrance Day and Christmas Day.

Engineer Drushka submitted claims for 204 and 128 miles for General Holiday pay over and above the monthly guarantee of 3,000 miles. The Company declined payment of the General Holiday claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. O. HEMMMINGSON	(SGD.) K. L. CRUMP
GENERAL CHAIRMAN	ASSISTANT VICE PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company:

M. A. Cocquyt	Labour Relations Assistant, C.N.R. Montreal
C. F. Wilson	Senior Agreements Analyst, C.N.R. Montreal

And on behalf of the Brotherhood:

L. O. Hemmingson	General Chairman, B. L. E., Winnipeg

AWARD OF THE ARBITRATOR

In the months of November and December 1967, Engineer Drushka's earnings were less than the amount payable for 3,000 miles, the amount of his monthly guarantee. In calculating these earnings, the company included the amount allowed for Remembrance Day in November and Christmas Day in December. There is no question of his entitlement to pay in respect of these days. These allowances were totalled in with his earnings for miles actually run, and it would appear that there would also have been included in this total mileage allowances for deadheading, called and cancelled, tied up between terminals, and other matters, if applicable. In any event the whole total, including the holiday allowances, was less the 3,000 miles. The Company paid only the guaranteed amount - the equivalent of 3,000 miles - for the months in question. It is the Union's contention that pay for the holidays was due in addition to the amount guaranteed.

There is no question as to Mr. Drushka's entitlement to holiday pay under Section 3 of Article 6.63, nor is there any dispute as to the amount payable, calculated by reference to Section 7 (b) of that article. The only question is whether this amount is to be included in calculating his total earnings which is subject to the guarantee, or whether it is to be paid separately and apart from the guaranteed amount.

Nothing in Article 6.63 deals expressly with this question, that only operative provision being that the employee entitled to holiday pay shall be paid" the appropriate amount. Likewise, the matter is not expressly dealt with in Article 3.23 (a) which is the relevant provision dealing with monthly guarantees, and which provides, so far as it is material, that engineers on assigned runs (such as Mr. Drushka) not able to make 3,000 miles per month will be paid 3,000 miles per month.

It was argued for the Union that the grievor lost the benefit of the holiday pay provisions unless he actually received holiday pay in addition to the guaranteed amount. In my view, however, this argument is not correct. Indeed, by the same reasoning, it would be said that an employee receives no pay for his actual miles run (below 3,000), since he is paid a minimum amount in any event. On the contrary, the clear intent of the guarantee provision is to ensure that, whatever an employee may earn, he will not be paid less than the equivalent of less than 3,000 miles. Before the amount which must be paid to bring an employee up to that level of earnings in any month can be determined, it is necessary to total his earnings which includes miles run, and, as noted above, other paynents in lieu of earnings. In the absence of some express provision in the agreement, it is my view that holiday pay would naturally be included in the total of an employee's earnings, and that any payment necessary to bring him up to thc guaranteed level would be determined having regard to this total. Clearly, every employee entitled to holiday pay gets the benefit of this credit, just as does every employee who actually works.

A similar conclusion was arrived at in Case No. 65, although the provisions of the Collective Agreement there involved were different from those-in the instant case.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR