

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 238

Heard at Montreal Wednesday, October 14th, 1970

Concerning

ALGOMA CENTRAL RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Yard Foreman W. Thompson for 8 hours pay August

JOINT STATEMENT OF ISSUE:

Yard Foreman W. Thompson was working Steelton Yard the week of 4 August and was cancelled on that date due to a Statutory Holiday. He only Worked 4 days in that week.

W. Thompson claimed 8 hours pay for the Statutory Holiday under Article 88, a 5 day week guarantee.

Claim was denied by the Company.

FOR THE EMPLOYEES:

(SGD.) C. E. McCLELLAND
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) H. R. WOOTTON
MANAGER - RAIL OPERATIONS

There appeared on behalf of the Company:

H. R. Wootton Manager Rail Operations, A.C.Rly., Sault
Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland General Chairman, U.T.U.(T), Sault Ste.
Marie

AWARD OF THE ARBITRATOR

In the week of August 4, Yard Foreman Thompson would regularly have worked five days. He was, it would seem, available for work on five days and would have worked on August 4 had his shift not been cancelled. As a regularly assigned yardman on a permanent assignment, Mr. Thompson was entitled to the benefit of article 88 of the collective agreement, which guarantees a five-day week. The

article provides as follows:

"ARTICLE 88 - GUARANTEES

Regularly assigned yardmen on permanent assignments will be paid not less than five (5) days in any one work week, exclusive of overtime. Extra service may be used to make up the guarantee. Yardmen in regularly assigned service laying off of their own accord or where the permanent assignment is on only for a part of the work week, will receive their full proportion of the work week guarantee. Classed yard foreman filling permanent assignments as yard helpers, who are taken from their assignments to work as yard foreman on a temporary vacancy or temporary assignment will be entitled to the guarantee. This rule does not apply to spare men."

The permanent assignment was for a five day week, and it was such a week's employment to which Mr. Thompson would be entitled under that article.

The Company's position is that Mr. Thompson is not entitled to the payment claimed, because the work week in question was adjusted to one of four days, and because he was not entitled to pay in respect of the holiday as such.

Article 89 of the collective agreement provides for general holidays, and to the entitlement of employees to payment therefor. August 4, 1969, was a general holiday under the agreement, and the company made arrangements for as many as possible of its employees to enjoy a holiday on that day. Mr. Thompson did not qualify for a holiday with pay under the provisions of the article. The only reference in article 89 to article 88 is in article 89(8):

- "8. The provisions of this Article will not result in a duplicate payment as a result of the application of Article 88."

Since there was no payment to Mr. Thompson under article 89, there could be no "duplicate payment". Article 89 contains no provisions otherwise limiting employees in the guarantee of earnings provided by article 88. In particular, it does not provide that there is a guarantee of only four days pay in weeks in which a holiday occurs. The effect of the company's contention would be to read such a provision into the agreement. The support for this contention is, as the company argues, that Mr. Thompson is in the result receiving pay for a holiday to which he is not entitled. In my view, however, this is not a correct characterization of the payment claimed. Mr. Thompson was not entitled to a holiday with pay on August 4. He could have been required to work on that day, and if he had done so would have been paid, it would seem, at his regular rate. This appears to be provided by article 89(4):

- "4. An employee who does not qualify under Section 2 with respect to pay for a general holiday and who is required by the Company to work on that day shall be paid in accordance with the provisions of the Wage Agreement."

It was only because his shift was cancelled that Mr. Thompson did not

work. The agreement does not require the cancellation of shifts on holidays, and as article 89(4) clearly contemplates, Mr. Thompson could have been required to work. His claim is not for holiday pay, but for the guarantee provided under article 88. These are distinct and independent provisions, unrelated except in the specific instances noted.

Article 88 itself does provide for a proportionate reduction of the work week guarantee where the permanent assignment is on only for a part of the work week. In this case the permanent assignment was on a five-day basis. Cancellation of one day's shift did not change the assignment to a permanent four-day assignment. If this were its effect, then the guarantee would be virtually meaningless. This provision of article 88 serves rather to ensure that an employee is not guaranteed a work week greater than that of his permanent assignment. In the instant case Mr. Thompson's permanent assignment was for five days per week. He was entitled to the benefit of article 88 with respect to that assignment, even though he was not entitled to any holiday.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR