CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 367

Heard at Montreal, Tuesday, July 11th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Alleged violation of Article 151 of Agreement 4.16.

JOINT STATEMENT OF ISSUE:

In 1970, Conductor F. A. Wilson was granted four weeks annual vacation for the time worked by him in the preceding calendar year. At the time of taking his vacation, which commenced on June 29, 1970, he was regularly assigned to a yard service assignment working within the switching limits of Toronto Terminals.

Conductor Wilson submitted time returns claiming payment of the vacation on the basis of 8 % of his 1969 gross wages. The Company allowed payment on the basis of twenty working days (4 weeks) at the yard service daily rate, pursuant to Article 151-A, Annual Vacation - Yard Service, of Agreement 4.16.

The employee subsequently submitted a claim for $250.33, being the alleged difference between the payment sought by the claimant and the amount paid by the Company. The claim was declined by the Company and the Union contends that, in so doing, the Company violated Article 151, Annual Vacation Road Service, of Agreement 4.16.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. R. ASHMAN GENERAL CHAIRMAN	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

A. J. DelTorto	System Labour Relations Officer, C. N. R., Montreal
D. C. Fraleigh	System Labour Relations Officer, C. N. R.,
S. Nicholson	Assistant Superintendent, C.N.R., Toronto

And on behalf of the Brotherhood:

G. R. Ashman	General Chairman, U.T.U. (T), Toronto

F. R. Oliver — Secretary General Committee, Lo.1130, U.T.U.(T), Toronto

AWARD OF THE ARBITRATOR

Article 151 (1) (c), relied on by the Union, provides as follows:

> "(c) An employee who at the beginning of the calendar year has completed 18 years of continuous employee relationship and who has rendered compensated service of 180 calendar months calculated from the date of entering service, will be allowed one calendar day's vacaticn for each 13 days worked and/or available for service, or major portion of such days during the preceding calendar year with a maximum of four weeks. Compensation for such vacation will be 8 % of the gross wages of the employee during the preceding calendar year."

Article 151 deals with "Annual Vacation - Road Service". At the beginning of the calendar year 1970, it seems that the grievor met the service requirements set out in Article 151 (1) (c) and, if he was an employee in road service, it would seem he would be entitled to vacation pay based on 8 % of his gross wages for 1969. Strangely, the material before me does not state expressly what type of service the grievor was engaged in at the beginning of 1970, but he seems to have been a "15th Seniority District trainman", and he is described as a conductor, and it may be assumed for the purpose of this decision that he was in road service. The Union oontended that it is the class of service in which the employee was engaged at the beginning of a calendar year which determines he applicability of section 151. I am unable to read the provision of the article that way. The reference to "the beginning of the calendar year" is surely a reference to the point in time at which vacation entitlement is determined. Article 151 does not deal explicitly, or implicitly, with the question of the effect on vacation entitlement of a change in class of service.

Article 151-A, relied on by the Committee deals with "Annual Vacation - Yard Service" and provides in section (1) (c) as follows:

> "(c) An employee who, at the beginning of the calendar year has completed 18 years of continuous employee relationship and who has rendered compensated service in 180 calendar months calculated from date of entering service will be allowed one working day's vacation with pay for each 12 1/2 days worked and/or available for service, or a major portion of such days, during the preceding calendar year, with a maximum of 20 working days."

Again the section simply details the vacation entitlements of employees to whom the article applies, that is yard service employees. It is silent as to the effect of change of class of service. But there is a provision within Article 151-A which does deal with the matter, namely, section (1) (f), which is as follows:

> "(f) An employee will be compensated for vacation on the basis of the service to which he was assigned at the time of taking

his vacation."

At the time he became entitled to vacation pay, the grievor was an employee in yard service. That is a fact set out in the Joint Statement of Issue. Whatever his status at the beginning of the year, the grievor became an employee in yard service when he was awarded, by bulletin, a job described as T-19 (530) Yard. This was one of the assignments described as as "yard assignments" in the memorandum of agreement set out on p.224 of the collective agreement. The Union contended that the assignment was really one in road service, but the contention simply cannot be considered, since the matter of the grievor's class of service at the material times is expressly and clearly dealt with in the Joint Statement of Issue and must be taken as an agreed fact.

The conclusion must be that at the time of taking his vacation, the grievor was in yard service. Article 151-A (1) (a) provides expressly that in such a case, the employee is to be compensated for vacation on the base of such service. It would be to contradict the clear provision of the collective agreement to come to any other conclusion.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR