CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 402

Heard at Montreal, Tuesday, March 13th, 1973

Concerning

CANADIAN PAClFIC EXPRESS LTD. (CP EXPRESS)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EXPARTE

DISPUTE:

That employees have been improperly paid for overtime worked, since January 1972.

EMPLOYEES' STATEMENT OF ISSUE:

Article 23 (e) of the Agreement provides as follows.

> "(e) Benefits or privileges which were in effect for employees covering monthly rated positions as of February 29th, 1968 will be continued, notwithstanding that such positions are now weekly rated".

The Brotherhood contend the computation of overtime rates of pay should have continued according to agreed practices in use prior to January 1st, 1972

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

F. E. Adlam	Director, Labour Relations & Personnel, CP Express, Toronto
J. J. Cowan	Director of Personnel, CP Transport Co. Ltd., Toronto
J. A. McGuire	Manager, Labour Relations, CP Rail, Montreal
W. H. Perks	Asst. Manager, Disbursement Accounting, CP Rail, Montreal
D. Cardi	Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

L. M. Peterson	General Chairman, B.R.A.C., Toronto, Ont.
G. Moore	Vice-General Chairman, B.R.A.C., Toronto, Ont.
F. C. Sowery	Vice-General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The issue in this case is as to the proper calculation of an hourly rate, for the purposes of overtime payment, in the case of employees who are paid on a weekly or other periodic basis. For some time, where monthly rates were involved calculation of the hourly rate was made by dividing the monthly rate by 169-1/3. Subsequently, semi-monthly payrolls were introduced, but this did not affect the method of calculation of hourly rates for overtime purposes. after still, the practice was changed to payment every two weeks. This practice was made the subject of agreement in 1967, and is supported by Article 23 (a) of the agreement currently in effect between the present parties, it being provided that "Pay date will be every second Thursday".

A formula was adopted for the conversion of monthly rates to weekly rates for payroll purposes. This was to multiply the monthly rate by .22996. Now if it is assumed that the number of regular hours worked per month is 169-1/3, then the application of that multiplier results in the number of regular houIs worked per week being stated as 38.95. Since, under the collective agreement, the regular hours per week are 40, it is evident that the application of the conversion formula devised for the conversion of monthly to weekly rate to the somewhat artificial figure established for the purpose of finding the hourly rate from a monthly wage, leads to an inapposite result. Where wages are expressed in weekly terms, and where the regular hours of work in a week a forty, clearly the way to determine the hourly rate is to divide the weekly rate by the number of hours over which it is earned, that is, by forty.

The Union does not dispute the logic of the foregoing, but contends that the basis of calculation of hourly rates for overtime purposes which had been in effect before the adoption of weekly rates must be continued because this basis of calculation was a "benefit" or "privilege" in effect for employees covering monthly rated positions as of February 29th, 1968 (being the class of employees affected by this grievance), and as such it is to be continued by virtue of Article 23 (e) of the collective agreement now in effect. That article is as follows.

> "(e) Benefits or privileges Which were in effect for employees covering monthly rated positions as of February 29th, 1968 will be continued, notwithstanding that such positions are now weekly rated."

Prior to the coming into force of the collective agreement now in effect, the collective agreement between the parties had contained an express provision that the pro-rata hourly rate was to be calculated by dividing the monthly rate by 169-1/3. Whether that formula resulted in a "true" hourly rate or not is immaterial, since the calculation was that provided for by the collective agreement. When wages were later calculated semi-monthly, and even when they were

calculated on a bi-weekly basis, the formula was continued. As long as wages were stated in the agreement on a monthly basis, and as long as the collective agreement set out that method of determination of the hourly rate, then of course that was the proper method.

The collective agreement now in effect, and which governs the determination of this case, sets out weekly rates of wages and provides for a forty-hour week. It does not, as preceding agreements have done, provide for the calculation of an hourly rate by dividing the monthly rate by 169-1/3. For one thing, there is no monthly rate provided. For another, the determination of an hourly rate from a weekly rate, where the number of hours per week is stated and the rate is set out in weekly terms, is an elementary matter an requires no special provision. There is no longer any express authority in the collective agreement to support the Union's contention that the hourly rate of employees is to be calculated as it had been in the past. Not only is there no such authority, but such a calculation would be inconsistent with the provisions of the agreement. To hold that such a calculation is required would be, in my view, to add to the agreement a provision it does not contain, and indeed to restore to it a provision which the parties had deleted.

While there is no express provision supporting the Union's contention in this case, it is argued that Article 23(e) has the effect of continuing the old method of calculation of hourly rate. In my view, it would be stretching the language of a provision such as this to give it the effect restoring to the collective agreement a particular provision of an earlier agreement, which has not been incorporated in the current agreement. This is particularly so where, as I have indicated, its result is something quite inconsistent with the obvious effect of the express terms of the agreement. As to matters not dealt with by the collective agreement, there may well be practices or conditions which are regarded as "benefits or privileges", and which were enjoyed by employees who had been in monthly-rated positions. Such employees would be entitled to the continuation of those benefits. This is not to say, however, that such group of employees would be entitled to an hourly rate for overtime work different from that applicable to employees generally under the collective agreement.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR