CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 434

Heard at Montreal, Tuesday, February 12th, 1974

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Mr. M. Chamberland concerning calculation of vacation pay on termination of employment.

JOINT STATEMENT OF ISSUE:

Following investigation held on November 28, 1972, Mr.Chamberland was dismissed from Company service effective December 28, 1972.

The Union contested the percentage payment under Article XX1X, clause 29.06 of the Collective Agreement.

Mr. M. Chamberland was paid all moneys owed to him in accordance with the Collective Labour Agreement and the Canada Labour Code upon termination. The Company therefore rejected the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. J. SIROIS, GENERAL CHAIRMAN	(SGD.) P. L. MORIN SUPERINTENDENT LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	Counsel
P. L. Morin	Superintendent-Employee Compensation, Q.N.S.&L.Rly.
R. C. Martin	Superintendent - Labour Relations Sept-Iles
W. A. Adams	Trainmaster - Q.N.S.&L.Rly., Sept-Iles
T. Leger	Assistant - Labour Relations, Q.N.S.&L.Rly., Sept-Iles
C. Nobert	Assistant - Labour Relations, Q.N.S.&L.Rly., Sept-Iles

And on behalf of the Brotherhood:

J. H. Bourcier, General Chairman, U.T.U.(T) - Sept-lles, Que.
G. W. McDevitt, Vice-President, U.T.U. - Ottawa

AWARD OF THE ARBITRATOR

The grievor's project service date with the Railway was July 18 1968. Thus, on July 18, 1972, he completed his fourth service year. He would then have been entitled to vacation pay at the rate of 8.59% of his gross earnings for the calendar year 1972, as appeaIs from Article 29.03 of the collective agreement which is as follows:

> "29.03 - Vacation pay will be computed by multiplying the employee's earnings in the calendar year preceding the complete service year date entitling him to vacation by the per cent (%) factor applicable in accordance with the following table.

Length of Service	% Factor of Gross Earnings
1 year	4.14%
2 years	5.33%
3 years	7.11%
4 years and thereafter	8.59%

In fact, the grievor took a portion of his 1972 vacation prior to July 18. This vacation was authorized pursuant to an understanding between the parties, and for that part of his vaction, the grievor was paid at the rate then appropriate for employees who had not yet completed four years' service, calculated on his 1971 gross earnings. There is no question as to this payment.

The grievor's employment was terminated on December 28 1972. At that time he was paid the balance of the vacation pay to which he was entitled in respect of the vacation time still remaining to his credit for 1972. He was paid, in respect of such time, at the rate of 8.59% of his 1971 gross earnings. Again, this appears to have been the correct payment. A further payment was made to the grievor on account of his vacation pay entitlment which may be said to have accrued during 1972. In the normal course, such vacation would have been taken in 1973, and his vacation pay calculated on the basis of his 1972 gross earnings. Since the grievor had been discharged, the question was simply one of vacation pay as such. That is the issue in this case.

It is the Company's position that the collective agreement makes no provision with respect to vacation pay for the year in which an employee is discharged. It may be noted that, if this view is correct, it would seem to apply with respect to all cases of termination of employment. It is argued that since the matter is not covered by the collective agreement, I have no jurisdiction to make the award sought by the Union. On this latter point, there is of course no doubt that any award must be founded on the provisions of the collective agreement and their application in the particular circumstances. In the instant case, the Union contends that the grievor was entitled to a vacation payment based on his 1972 gross earnings and calculated in accordance with the provisions of Article 29.03. As has been noted, such a calculation would be at the rate of 8.59% of gross earnings. In fact the Company, taking as I have said the position that the matter was not covered by the collective

agreement, made a payment to the grievor of 4% of his 1972 gross earnings, purportedly pursuant to the Canada Labour Code.

Article 29.01 provides generally that trainmen will be allowed vacation with pay, varying with length of service and with time worked, each service year, according to a table there set out. By Article 29.02, employee must have one year of continuous service to qualiiy for vacation with pay. In the case of the employee who does not so qualify, Article 29.06 provides that such employees, having less than one year's service upon termination will receive 4% of total earnings in lieu of paid vacation. The grievor's case, of course, does not come under Article 29.06, since he had more than one year service. The Company argues that since this is the only provision dealing with payment upon termination, and since the grievor's case is not covered by it, therefore there is no provision for a termination payment to the grievor. With respect, however, it is my view that the purpose of Article 29.06 is to deal with the special case of the employee not otherwise entitled to vacation pay. In lieu of such paid vacation, a special payment is provided for.

The silence of the collective agreement with respect to the termination of employees with a year's continuous service or more does not suggest that such employees were intended to receive nothing pursuant to the collective agreement. It is, rather, consistent with the view that other provisions of the agreement deal with their situation. As noted above, the collective agreement quite clearly provides for the payment of vacation pay generally, and in particular to employees having more than one year of continuous service. The right to a vacation and to vacation pay is earned by an employee as he works, once he has worked for one year. The length of the vacation and the amount of vacation pay is a function of the length of time worked, the rate of pay, and the length of service. I think it is proper to say that an entitlement to vacation pay accrues throughout the period, the gross earnings whereof will be the basis on which vacation pay is calculated. Thus, throughout 1972, as the grievor worked, his entitlement to vacation pay continued to accrue. The termination of his employment in 1972 brought a conclusion to the accumulation of earnirgs for that year, but should not, in my view, be considered to have deprived the grievor of the vacation pay benefits which he had, by his work for the Company, earned.

Accordingly, it is my conclusion that the material provisions of the collective agreement do indeed provide for the payment of vacation pay to the grievor in respect of his 1972 gross earnings. lt is clear from Article 29.03 that such payment would be at the rate of 8.59% of those gross earnings. The material before me shows the grievor's 1972 earnings to have been $10,437. It is therefore my award that the grievor be paid 8.59% of $10,437.27, less the amount of $417.49, previously paid in respect of vacation pay.

J. F. W. WEATHERILL
ARBITRATOR