CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 437

Heard at Montreal, Tuesday, April 9th, 1974

Concerning

CANADIAN PACIFIC EXPRESS LTD. (CP EXPRESS)

and

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

DISPUTE:
That employees A. Bastien and A. Ricard, Montreal, Quebec, be paid for the General Holiday, September 3rd, 1973.

JOINT STATEMENT OF ISSUE:

Article 35(b) 3. of the Working Agreement states.

"must be entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday."

The employees worked during twelve shifts or tours of duty prior to the General Holiday.

The Brotherhood contend these employees having received wages for all or part of these shifts our tours of duty are qualified for General Holiday pay.

The Company contend they did not complete two of the twelve shifts or tours of duty and are therefore not qualified for General Holiday pay.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) D. R. SMITH
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company:

D. R. Smith	Director Labour Relations & Personnel, CP Express-Toronto
D. Cardi	Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

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

J. Boyce	Vice-General Chairman, B.R.A.C., Toronto
R. C. Smith	Vice-President, T-C Div. of B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

At the hearing of this matter the Union withdrew the grievance of Mr. Bastien, proceeding only with that of Mr. Ricard.

The grievor, who would otherwise have been entitled to payment for Labour Day, 1973, was at work, and did work, during the course of twelve shifts or tours of duty during the thirty calendar days immediately preceding the holiday. He did not, however, complete each shift or tour of duty. In three cases, he left work after some five and one-half hours in order to participate in a rotating strike which had been called by the Union. The strike was a legal one, and it is not suggested there was anything improper in what the grievor did. It is the Company's position, however, that his failure to complete the necessary number of shifts or tours of duty made the grievor ineligible for holiday pay.

It is true that the collective agreement does not set out, in Article 35(b) 3,the number of hours which an employee must work in order to qualify for vacation pay. It refers simply to "shifts" or "hours of duty". Thus, where an employee is scheduled to work less than the eight hours refers to in Article 12 as constituting a day's work, he would meet the requirements of Article 35 in completing the required period of work. This is not to say, however, that those requirements are met where the employee does not complete a shift or tour of duty, whatever its scheduled hours.

Where the Company itself abridges the working requirement or where, because of illness during a shift or other good cause an employee is prevented from completing a shift or tour of duty, then special consideration might arise, although no decision is now made with respect to that. In the instant case, however, where the grievor, by his own act, prevented himself from completing a shift or tour of duty, he cannot properly be said to be entitled to wages "for" that shift or tour of duty. Accordingly, he did not meet the requirements of Article 35(b)3.

For this reason, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR