CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 551

Heard at Montreal, Tuesday, June 8th,l976

Concerning

ALGOMA CENTRAL RAlLWAY

and

UNlTED TRANSPORTATION UNlON (T)

DlSPUTE:

Claims of Conductor F. Turner, Brakeman C. Headrick and G. Witty of Hawk Junction, Ontario for 100 miles at Yard rates, December 25, 1975 and January 1, 1976.

Claim of Conductor F. Turner, Hawk Junction, Ontario for 269 miles at Road Switcher rates for month of December 1975.

Claim of Trainman E. Trudeau, Hawk Junction, Ontario for 400 miles at Road Switcher rates for month of December 1975.

Claim of Conductor J. R. Montgomery, Hawk Junction, Ontario for 200 miles Road Switcher rates for month of December 1975.

JOINT STATEMENT OF ISSUE:

Conductors F. Turner and J. R. Montgomery, Brakeman C.Headrick G. W. Witty and E. Trudeau were all assigned to Roadswitcher Service at Hawk Junction, Ontario. The assignments for Christmas Day, December 25, 1975 and New Years Day, January 1, 1976, were not required to operate. The employees submitted clalms for both General Holiday pay and the monthly Guarantee. Payment of the claims for General Holiday under the provisions of Article 89 was made. Payment of the claim under the provision of Article 8 of the Collective Agreement were declined by the Company and the Organization alleges that Article 8 of the Collective Agreement was thereby violated by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. Sandie	(Sgd.) S. A. Black
General Chairman	General Manager-Rail Division

There appeared on behalf of the Company:

V. E. Hupka	Manager lndustrial Relations, A.C.Rly., Sault Ste. Marie
S. A. Black	General Manager Rail Division, ''
N. L. Mills	Superintendent-Transportation, '' ''

And on behalf of the Brotherhood:

J. Sandie — General Chairman, U.T.U.(T) - Sault Ste. Marie, Ont.

AWARD OF THE ARBlTRATOR

Article 8 (3) of the collective agreement provides for the monthly guarantee to which trainmen in Road Switcher Service are entitled. It is as follows:

> "ln any one month trainmen regularly assigned to Road Switcher service will be paid not less than an amount equivalent to 2500 miles pay at Yard rates of pay applicable to the position worked. When trainmen are assigned only a portion of the month or trainmen are relieving on such assignments, the guarantee will be pro-rated on the basis of the number of the calendar days the assignment is in effect."

In this case, the grievors were entitled to General Holiday pay in respect of Christmas Day and New Years Day. The claim is, in effect, that payments of holiday pay should not be taken into account when computing the amount which may be payable under the guarantee. The Company's position is that the amounts of holiday pay may be totalled in with other payments, notably miles actually run, before calculating any balance due under the guarantee.

A very similar question arose in Case No. 170. There, as here, there was nothing in the collective agreement which dealt expressly with the question whether holiday pay should be considered in calculating the guarantee payment. The essential reasoning in Case No. 170 was in the following paragraph:

> "lt was argued for the Union that the grievor lost the benefit of the holiday pay provisions unless he actually received holiday pay in addition to the guaranteed amount. In my view, however this argument is not correct. lndeed, by the same reasoning, It would be said that an employee receives no pay for his actual miles run (below 3,000), since he is paid a minimum amount in any event. On the contrary, the clear intent of the guarantee provision is to ensure that, whatever an employee may earn, he will not be paid less than the equivalent of less than 3,000 miles. Before the amount which must be paid to bring an employee up to that level of earnings in any month can be determined, it is necessary to total his earnings which includes miles run, and, as noted above, other payments in lieu of earnings. ln the absence of some express provision in the agreement, it is my view that holiday pay would naturally be included in the total of an employee's earnings, and that any payment necessary to bring him up to the guaranteed level would be determined having regard to this total. Clearly, every employee entitled to holiday pay gets the benefit of this credit, just as does every employee who actually works."

Reference was made to Case No. 65, where a similar conclusion was reached, although different collective agreement language was involved. Again in Cases 84 and 222 it was found that the collective

agreement spelt out those cases where payments would not be considered in making up the guarantee. ln Case No.520 a similar claim was allowed where an employee worked on a holiday, the case turning on the meaning of the phrase "the penalty payment" as it occurred in that agreement. In Case No. 415, it was concluded that certain "arbitrary" payments would not be included in calculating the guarantee; in that case, however, the holiday pay situation, as dealt with in Cases 65, 84, 170 and 222 was expressly distinguished.

In the instant case the collective agreement, in certain other provisions for payment, provides that such payments may or may not be used to make up the monthly guarantee. Since such provisions go both ways, no conclusion can properly be drawn as to the intent of the parties with respect to holiday pay, where the collective agreement is silent in this respect.

In my view, the general reasoning set out in Case No. 170 applies equally in the instant case. By Article 8 (3) of the collective agreement in this case, an employee is to "be paid not less than" the amount described, "in any one month". ln a previous agreement it was provided that some other class of service might be considered. That provision, however, whether in or out of the agreement, carries no implications with respect to holiday pay, it would be significant because Article 8 (3) deals with employees in a particular class of service, but the question of holiday pay has no particular relation to that matter. As far as the guarantee under Article 8 (3) is concerned, it requires the calculation of what an employee regularly assigned to that service has been paid, and a comparison of that with the equivalent of 2500 miles. Here, the grievors were paid holiday pay at the rate appropriate to their positions. It was proper for the Company to take such payment into account in determining how much the grievors were paid in the months in question. That total could then be compared with the guarantee, and any necessary additional payment made.

For the foregoing reasons, the grievance is dismissed.

J.F.W. WEATHERILL
ARBITRATOR