CANADIAN RAlLWAY OFFICE OF ARITRATION

CASE NO.587

Heard at Montreal, Tuesday, January 11,1977

Concerning

CANADlAN NATlONAL RAlLWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DlSPUTE:

Time claim submitted by Mr. C. L. Ritcey for additional overtime payment as a result of having worked on a General holiday September 2, 1974.

JOINT STATEMENT OF lSSUE:

On Labour Day, September 2, 1974, Mr. C. L. Ritcey was assigned as Cook on Train 11 operating between Halifax and Montreal. Mr. Ritcey was governed by Article 4.2 of Agreement 5.8 which provides for a pay system based on an 8-week averaging principle. Features of the pay system are that regularly-assigned employees are paid a guarantee of 80 hours for each 2-week period encompassed in the 8-week averaging period and that the hours worked in an 8-week period are averaged to determine time worked in excess of the aggregate basic 320 hours (40 x 8 weeks), which hours are paid at time and one-half.

On September 2, 1974, Mr. Ritcey worked 16 hours and 40 minutes That day fell within pay period 18 which was the second 2-week pay period within the 8-week averaging period, August 9 to October 3, 1974, inclusive.

ln pay period 18 Mr. Ritcey was paid 16 hours and 40 minutes at time and one-half for the hours worked on the general holiday and 8 hours at straight time for the general holiday. The general holiday pay and the one-half portion of the time and one-half payment for hours worked on the general holid were paid over and above the 80 hours guarantee.

ln the calculation of the aggregate hours worked for the determination of overtime entitlement in the 8-week averaging period, the hours worked on the general holiday were not included by the Company on the basis that such hours had already been paid at punitive rates on a current basis in pay period 18.

The Brotherhood contends that in so doing the Comnany has violated Articles 4.1 and 4.2 of Agreement 5.8.

FOR THL EMPLOYEE: FOR THE COMPANY:

(Sgd.) J. A. Pelletier (Sgd.) S. T. Cooke

National Vice-President — Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

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| G. A. Carra | System Labour Relations Officer, C.N.R., Montreal |
| C. C. Bright | System Manager Employee Relations & Admlnistration - Passenger Marketing, C.N.R., Montreal |
| Mrs. C. McHardy | Labour Relations Assistant, C.N.R., Montreal |

And on behalf of the Brotherhood:

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| J. A. Pelletier - | National Vice President, C.B.R.T., Montreal |

## AWARD OF THE ARBlTRATOR

The articles referred to are as follows:

"4.1 The principle of the 40-hour week is recognized and an average of 160 hours in assigned service shall constitute a basic four-week period.

4.2 As the nature of the work performed in the Customer and Catering Services operations necessitates irregular distribution of employees, hours of work and days of assignment, the principle of averaging will be in accordance with the following formula:

(a) Regularly assigned employees shall be paid a basic salary for each two-week period.

| EXAMPLE: | Hours Credited | Hours Paid |
|---|---|---|
| lst four-week period..... | 140 | 160 |
| 2nd four-week period..... | 165. | 160 |
| | 305 | 320 |
| Guarantee..... | 15 | |
| | 320 | |
| Adjustment..... | | Nil |

(b) Hours worked for each consecutive 8-week period will be averaged to determine time worked in excess of the aggregate basic 320 hours and hours in excess of the aggregate shall be paid at time and one-half.

| EXAMPLE: | Hours Credited | Hours Paid |
|---|---|---|
| lst four-week period..... | 150 | 160 |
| 2nd four-week period..... | 190 | 160 |
| | 340 | 320 |
| Adjustment 20 hours at l 1/2 . . . | | 30 |

The grievor was entitled to, and was paid holiday pay in respect of the day in question, and he was also pald at the rate of time and one-half in respect of the hours worked on that day. He did in fact work 16 hours and 40 minutes that day, and the question is whether that time should be taken in account in calculating any overtime to which the grievor may be entitled in respect of the averaging period in which the holiday fell.

Holiday pay, as is recognized, is separate and apart from the guarantee "and from hours earned" during the period: article 8.2. Here, however, we are only concerned with entitlement to overtime. Article 4.2 (b) is, it seems to me, clear with respect to the method of calculating entitlement to overtime. Hours worked in excess of 320 ("the aggregate basic 320 hours'') are to be paid for at time and one-half. The Company contends that the hours worked on the day in question should not be counted in determining the aggregate basic hours for the period because those hours had been paid for at punitive rates. That is, because they were worked on a general holiday, the grievor was entitled to payment therefor at time and one-half.

What article 4.2 (b)_calls for, however, is a compilation of time worked. Overtime is payable for time worked in excess of the basic amount. The grievor did work on the day in question, and if that work is not counted, then he will have worked more than the basic number of hours without receiving any overtime premium. The fact that the time worked on the holiday may have been paid for at premium rates, (because it was a holiday) does not alter the fact that work was done, nor does it affect the grievor's entitlement to be paid overtime for work in excess of the aggregate basic 320 hours in the averaging period. This is not, in my view, a case of "pyramiding overtime", but simply a case of including in an aggregate of hours worked, those hours which happen to be worked on a holiday. For the purpose of calculating the aggregate number of hours in the averaging period the hours worked on the holiday are simply counted without any sort of expansion or premium. It is the time actually worked which is to be totalled. Overtime may then be payable in respect of time worked in excess of 320 hours. lt would be irrelevant that, in respect of some of the 320 hours, some sort of premium may have been payable.

For the foregoing reasons the grievance is allowed.

J.F.W. WEATHERILL
ARBITRATOR