

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1171

Heard at Montreal, Tuesday, January 10, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. D. D. Marsden claims payment for the General Holiday of December 27 and 28, 1982. He was off work account illness starting December 21, 1982, at 12:00K.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. D. D. Marsden qualified for General Holiday pay December 27 and 28, 1982, in accordance with Section 10.3 and 10.4, Wage Agreement 41. He was off work account illness starting December 21, 1982, at 12:00K.
2. He be paid 16 hours pay at his regular rate of pay as Leading Track Maintainer, Section 10.6, Wage Agreement 41.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN  
System Federation  
General Chairman

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH  
General Manager,  
Operation and Maintenance

There appeared on behalf of the Company:

|                 |   |
|-----------------|---|
| R. D. Falzarano | - Assistant Supervisor, Labour Relations, CPR, Winnipeg |
| F. B. Reynolds  | - Supervisor, Labour Relations, CPR, Winnipeg           |
| P. E. Timpson   | - Labour Relations Officer, CPR, Montreal               |

And on behalf of the Brotherhood:

|                |  |
|----------------|--|
| H. J. Thiessen | - System Federation General Chairman, BMWE, Ottawa |
| R. Gaudreau    | - Vice-President, BMWE, Ottawa                     |
| G. Valence     | - General Chairman, BMWE, Sherbrooke               |
| E. J. Smith    | - General Chairman, BM??, London                   |
| L. DiMassimo   | - Federation General Chairman, BMWE, Montreal      |

#### AWARD OF THE ARBITRATOR

Both Christmas and the Boxing Day Holidays were on December 27 and 28, 1982 because the regular days for such holidays fell on the week-end.

Between the period of December 21, 1982 (at 1300 hrs) and December 29, 1982, the grievor was alleged to have been ill. Accordingly, he could not have been, and allegedly was not available for duty as required by Article 10.4 of the collective agreement. Because he was "not available for duty" the company denied the grievor his holiday pay for the two day holiday period. Articles 10.3 and 10.4(b) read as follows:

"10.3 When any of the above holidays falls on Sunday or Saturday the day observed by the Federal Government in respect of its employees as the holiday shall be recognized.

If, in any province or part thereof, a holiday is more generally recognized than any one of the holidays specified above, the signatories to the Master Agreement dated May 24, 1974 will substitute such holiday therefor in that province or part thereof. If such signatories fail to agree that such holiday is more generally recognized, the dispute will be submitted to arbitration for final decision.

10.4 In order to qualify for pay for any one of the holidays specified in Clause 10.2, an employee:

(b) must be available for duty on such holiday if it occurs on one of his work days excluding vacation days.

This Clause does not apply in respect of an employee who is laid off or suffering from a bona fide injury or who is hospitalized on the holiday, or who is in receipt of, or who subsequently qualifies' for, weekly sickness benefits because of illness on such holiday.

A regularly assigned employee who is required to work on such general holiday shall be given an advance notice of four (4) calendar days, except for unforeseen exigencies of the service in which case he will be notified not later than the completion of his shift or tour of duty immediately preceding such holiday that his services will be required."

The evidence disclosed that at no time did Mr. Marsden advise his superiors that he was ill during the period in question. He did not visit a doctor. He complained that he simply had a cold or the

influenza. On December 29, the grievor was required to secure a medical certificate as a condition for his return to work. The medical certificate indicated that "according to him", Mr. Marsden was unable to work. The employer did not believe the grievor was sick and indeed imposed ten demerit marks for his alleged misconduct. The grievor did not grieve that disciplinary penalty.

The issue in this case is whether the grievor fell within the excepted provisions of Article 10.4(b) that would enable him to receive holiday pay even though he was not available for duty on the two holidays.

In this regard the parties are agreed that in order for the grievor to gain exemption by reason of illness he would have had "to qualify" for weekly sickness benefits because of illness on the holiday. Because the grievor failed to visit a doctor during the period of his illness and secure an appropriate medical certificate as to his sickness he could not have "qualified" for the said benefits. Accordingly, the grievor has failed to satisfy me that he ought to be excepted under Article 10.04(b) from the requirement of being available for duty on such holidays. The grievance is accordingly denied.

DAVID H. KATES,  
ARBITRATOR.