

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1379

Heard at Montreal, Wednesday, June 12, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On July 2, 1984, Track Maintenance Foreman W. VanDoesburg and Track Maintainer J. Kroeher, reported for duty to patrol their Section and were advised they were not required.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Messrs. VanDoesburg and Kroeher should have been advised their services would not be required prior to reporting for work, but were not.
2. Both employees be compensated for 3 hours at P.O.T. rates in accordance with Sections 8.5 and 10.8, 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.) L. A. HILL
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan - Supervisor, Labour Relations, CPR, Vancouver
R. T. Bay - Asst. Supervisor, Labour Relations, CPR,
Vancouver
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:.

H. J. Thiessen - System Federation General Chairman, BMWE,
Ottawa
R. Y. Gaudreau - Vice-President, BMWE, Ottawa
L. M. DiMassimo - Federation General Chairman, BMWE, Montreal

AWARD OF THE ARBITRATOR

Since 1981 the company has adopted the practice on the Leduc

Subdivision of assigning the Roadmaster and Deputy Roadmaster track patrol functions on weekends. The effect of this practice has been to remove from the Track Maintenance Foreman's responsibility the performance of track patrol duties on Mondays. As a result the requirement of RTC Order Number R-21295 governing the inspection of railway tracks not in excess of two calendar days is met.

The grievors reported for work on the General Canada Day Holiday on July 2, 1984. They were not advised by the company that their services would be required on that day. Indeed, the track inspection duties required by RTC Order Number R-21295 were discharged the previous weekend as was the company's practice. The grievors nonetheless have claimed 3 hour pay at the punitive rate for their reporting for work pursuant to Section 10.8 of the collective agreement.

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"10.8 An employee who is required to work on a general holiday shall be paid, in addition to the pay provided in Clause 10.6, at a rate equal to one and one-half times his regular rate of wages for the actual hours worked by him on that holiday with a minimum of three hours for which three hours' service may be required, but an employee called for a specific purpose shall not be required to perform routine work to make up such minimum time."

The company indicated that the company's practice of assigning track inspection duties to the Roadmaster or his Deputy on the weekend did not require the grievors to report for work on the General Holiday. As there was no requirement for the grievors to perform any work on that day they were not entitled to the holiday premium of 3 hours pay. Indeed, had their services been needed the company pointed out that it would have complied with the advance notice requirements under Section 10.4(b), Paragraph 3 which reads as follows:

"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 company's position in this case must prevail. There was "no requirement" for the grievors to report to work on the General Holiday and therefore they reported for work on that day at their peril. Had there been such a requirement then the company clearly would have been obliged to give the grievors the minimum advance notice of four days.

Nor can I find that there was any standing order that required the grievors to report for work in order to discharge track inspection

duties pursuant to the Maintenance of Way Rules and Instructions Those duties are only imposed upon the Track Maintenance Foreman to the extent he is instructed by the company to discharge those functions. Quite clearly, the grievors were not scheduled for work on the Canada Day Holiday and therefore there was no duty, unless otherwise required, for the to have reported for work to perform track inspection duties.

Nor could they have been disciplined (as argued by the trade union had they not reported for work) for failing to perform these functions in the absence of any express requirement for them to do so. The trade union's argument in this regard is quite specious. Surely, the company cannot discipline an employee for an alleged omission of duty where he has not been scheduled to report for work.

As a result the grievance is dismissed.

DAVID H. KATES,
ARBITRATOR.