

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1389

Heard at Montreal, Wednesday, July 10, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Track Maintenance Foreman A. Borden for eight hours' general holiday pay for 2 July 1984.

JOINT STATEMENT OF ISSUE:

Mr. Borden was notified by the Roadmaster to patrol his territory on 2 July 1984, a general holiday. The grievor did not show up for work on the day in question.

The Brotherhood contends Mr. Borden is entitled to eight hours' general holiday pay under Article 10 of Collective Agreement 10.1.

The Company denies the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General
Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

J. Russell	- Labour Relations Officer, CNR, Montreal
T. D. Ferens	- Manager Labour Relations, CNR, Montreal
S. Williams	- Labour Relations Officer, CNR, Winnipeg

And on behalf of the Brotherhood:

G. Schneider	- System Federation General Chairman, BMW, Winnipeg
R. Y. Gaudreau	- Vice-President, BMW, Ottawa
T. J. Jasson	- Federation General Chairman, BMW, Winnipeg.

AWARD OF THE ARBITRATOR

This is a claim by Track Maintenance Foreman A. Borden for 8 hours general holiday pay for the July 2, 1984 holiday, pursuant to Article 10.2 of Agreement 10.1. The employer declined the grievor's request because he had not satisfied the prerequisites for the holiday premium as required under Article 10.4 (b):

"In order to qualify for pay for any one the the holidays specified in Article 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.

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It is clear that the grievor was not available for work on the July 2, 1984 General Holiday. Nevertheless, the company agreed that practice has existed that would enable the grievor to be paid the holiday premium if he could arrange for an appropriately trained substitute to take his place. In this regard, the grievor relied upon Article 2.12 of the company's Maintenance of Way Rules:

"They are responsible for such patrols or inspections as instructed by their supervisors or defined in the duties of their position. If they are unable to make the required inspection they must assign a reliable, competent employee to perform this duty for them and advise their supervisor immediately."

The company submitted that no appropriate arrangement was made by the grievor to enable a competent employee to perform his duties on the general holiday. Indeed, the company's position was that when the grievor advised that he was not prepared to report for work, supervisory staff had to arrange for a replacement.

The trade union insisted that a replacement was arranged from the adjacent territory but that arrangement was vetoed by the company. In this sense, the trade union argued that the grievor satisfied his obligations and notionally should be paid for the General Holiday as any other employee who was not required to work.

This case, unfortunately, must be decided on the credibility of the grievor's assertion that he had arranged for an appropriate replacement on the General Holiday. And, in this regard, nowhere in the trade union's brief is the identity of the replacement indicated. Nor is it shown that that employee was competent and eligible to replace the grievor in the performance of the required duties. Moreover, the charge that the company upset the arrangement is not detailed. In short, there is no material adduced in evidence that established the grievor's claim for exemption from the qualification that he must be available for duty in order to receive the holiday pay premium.

Based on the onus of proof and the credibility of the grievor's unsubstantiated claim that a replacement was arranged, I am compelled to conclude that the grievor failed to qualify for the July 2, 1984 holiday premium.

The grievance is therefore denied.

DAVID H. KATES,
ARBITRATOR.