

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1613

Heard at Montreal, Tuesday, February 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Conductor D. R. Danielson of Thunder Bay for General Holiday payment, 27 December 1983.

JOINT STATEMENT OF ISSUE:

On 26 December 1983, a general holiday, at 1130 hours, Conductor Danielson booked sick off his regularly assigned position as Conductor in the south pool. While on booked off status his assignment was called to work at 1615, 26 December 1983. The assignment was then called to work for a turn out of Atikokan the away from home terminal at 0600 on 27 December 1983, a general holiday. Conductor Danielson booked back onto the working board at 0647, 27 December 1983 and was held waiting the return of his assignment which returned at 1105, 28 December 1983. He submitted a claim for payment for the general holiday on December 27, 1983, which was declined by the Company.

The Union contends that Conductor Danielson was available for the holiday and is entitled to payment.

The Company declined the Union's appeal.

FOR THE UNION:

(SGD.) LARRY OLSON
FOR: General Chairman

FOR THE COMPANY:

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

There appeared on behalf of the Company:

L. A. Harms	- Labour Relations Officer, CNR Montreal
J. R. Hnatiuk	- Manager Labour Relations, CNR Montreal
D. Lord	- Labour Relations Officer, CNR Montreal
M. C. Darby	- Coordinator Transportation, CNR Montreal
K. J. Knox	- Manager Labour Relations, CNR Winnipeg
P. Morrissey	- Labour Relations Officer, CNR Winnipeg

And on behalf of the Union:

L. H. Olson - Vice-General Chairman, UTU Winnipeg

C. S. Lewis - Secretary, UTU Coquitlam
R. J. Proulx - Vice-President, UTU Ottawa

AWARD OF THE ARBITRATOR

It is common ground that Mr. Danielson was a conductor in unassigned service at Thunder Bay. Because he booked off sick on December 26, 1983, he was not able to respond to a call for his crew, at 1615 hours on December 26 to deadhead by bus to Atikokan. A spare conductor was called to take his place. In consequence of that he missed service with his crew, including work train service out of Atikokan on December 27 and through freight service back to Thunder Bay on December 28, 1983.

Conductor Danielson booked back on to the working board at 0647 hours on December 27, 1983. In fact he was not given any assignment on that day, but was held waiting the return of his crew. It appears that he was returned to his position on the crew upon its arrival in Thunder Bay on December 28, 1983, at 1105 hours. December 27 is a holiday for the purposes of the Collective Agreement.

The sole issue is whether Conductor Danielson was "available for duty" on December 27 within the meaning of Article 128.2 (c) of the Collective Agreement which provides as follows:

128.2 In order to qualify for pay on any of the holidays specified in paragraph 128.'1, an employee shall have completed 30 days of continuous employee relationship and in addition: ...

(c) unless cancelled, shall be available for duty on such holiday if it occurs on one of his work days excluding vacation days.

The thrust of the Company's position is that the grievor was in effect unavailable for duty because he booked off on the day prior to the date of the holiday and was therefore unable to work with his crew, which had left Thunder Bay the day prior, and was then working out of Atikokan. The Union, on the other hand, submits that the grievor was in fact available for whatever assignment might arise, including the possibility of an emergency assignment, once the assignment of all other employees had been exhausted in keeping with the terms of the Collective Agreement.

A similar issue was considered in CROA Case 1123, which involved the same parties in respect of Collective Agreement 4.16 covering the Eastern Lines. It was there held that an employee was "available for duty" within the meaning of sub-paragraph (c) where he was available for some 22 hours, rather than the whole 24 hours of the calendar day of the holiday. It is instructive to note that the Collective Agreement then under consideration included the operative provisions of Article 128.2 under what is there Article 77.2 which also provides in part, as follows:

(e) employees except if on the spare board, who are unavailable

when called or book off for their assignments which commence on the day before a general holiday and thereby make themselves unavailable for a return movement on the general holiday will not be considered as available under sub-paragraph (c) of this paragraph. This sub-paragraph (e) shall not apply to an employee covered by the provisions of items (2) and (3) of sub-paragraph (c) of this paragraph.

The foregoing language would appear to capture the circumstances of the instant case. It is significant, however, that Article 128.2 of the instant document, Collective Agreement 4.3, contains no provisions in the same terms as or similar to the language of Article 77.2 (e). In other words, Collective Agreement 4.3, which governs the services of trainmen and yardmen in the Prairie and Mountain Regions is substantially different in its language from Collective Agreement 4.16, which was negotiated separately in respect of trainmen and yardmen on the Eastern Lines, interpreted in CROA 1123.

It is trite to say that words in a Collective Agreement should be given their plain and ordinary meaning. The concept of being "available for duty" is obviously different from being on duty or, for that matter, being likely to be placed on duty. In the case at hand Conductor Danielson booked onto the working board at 0647 hours on December 27, 1983. He was, for the overwhelming portion of that day, at all times available for duty, whether or not he was called.

Whatever the equities may be, absent specific language of the kind found in Collective Agreement 4.16, and more particularly Article 77.2 (e) of that document, the Arbitrator has no basis upon which to accept the interpretation of Article 128.2 advanced by the Company. For these reasons, the grievance must be allowed.

The claim for payment of the general holiday on December 27, 1983, submitted by Conductor D. R. Danielson shall be paid forthwith. I retain jurisdiction in the event of any dispute between the parties in respect in the interpretation or implementation of this award.

MICHEL G. PICHER,
ARBITRATOR.