

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1883

Heard at Montreal, Wednesday, 15 February 1989

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim for 8 hours General Holiday payment submitted by Mr. B. Wright of Kamloops, B.C.

JOINT STATEMENT OF ISSUE:

Mr. B. Wright's regular work assignment is such that on Mondays he works as an Assistant Chief Clerk from 0730-1600 and as a Train Machine Clerk from 2355-0755.

Monday, August 3, 1987 was a General Holiday and Mr. Wright was not required to work his assignment from 0730-1600. Accordingly, he was paid eight hours pay at the straight time rate as provided for by Article 13.6.

Mr. Wright had been notified by bulletin that he was required to work his assignment which commenced at 2355 on August 3. Mr. Wright did work this shift and was paid for this eight hour shift at the rate of one and one-half times his regular rate of pay.

A claim was submitted stating that Mr. Wright was entitled to eight straight time hours pay in addition to his eight overtime hours for his 2355-0755 shift on August 3, 1987 in accordance with Article 13.8 and 13.9 of the Collective Agreement.

Inasmuch as Mr. Wright has been paid an amount equal to 20 hours pay at the regular rate for performing eight hours work on the August 3 General Holiday, the Company contends that Mr. Wright has been properly paid in accordance with Article 13.9 of the Collective Agreement and there is no further entitlement to payment.

FOR THE UNION:

(Sgd) D. DEVEAU  
General Chairman

FOR THE COMPANY:

(Sgd) J. M. WHITE  
General Manager  
Operation & Maintenance, HHS

There appeared on behalf of the Company:

L. J. Guenther - Assistant Supervisor Labour Relations

Vancouver  
D. A. Lypka - Labour Relations Officer, Vancouver  
P. E. Timpson - Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau - General Chairman, Calgary  
J. Robertson - Vice-General Chairman, Nelson

#### AWARD OF THE ARBITRATOR

The following are the pertinent provisions of the Collective Agreement which bear on the resolution of this grievance:

13.6 An assigned employee qualified under Clause 13.4 of this article and who is not required to work on a general holiday shall be paid eight hours' pay at the straight time rate of his regular assignment.

...

13.9 An employee paid on an hourly, daily or weekly basis who is required to work on a general holiday shall be paid, in addition to the pay provided in Clauses 13.6 and 13.7 of this article, 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 3 hours for which 3 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 material establishes beyond dispute that the grievor was scheduled to work two separate shifts on the August 3 general holiday. He did not work his first shift, scheduled from 07:00 to 15:00, in consequence of which he was paid for eight hours at the straight time rate in accordance with Article 13.6. He was, however, required to work the later shift from 23:55 to 07:55, which under the terms of the Collective Agreement is agreed to constitute a tour of duty scheduled on the holiday. For that shift he was paid at the rate of time and one-half, in accordance with Article 13.9. The Union claims that he is further entitled to the payment of eight hours at straight time under Article 13.6 in respect of the second shift. The Company, on the other hand, maintains that having been paid the eight hours at straight time for the first shift which he did not work, he is not entitled to the same right in respect of the second shift. It argues that payment to him of the eight hours would constitute a pyramiding of benefits inconsistent with the Collective Agreement.

With that submission the Arbitrator cannot agree. Pyramiding is generally considered to involve paying twice for the same hours of work, a result which is generally presumed, absent a clear intention to the contrary, not to be contemplated by the terms of a collective agreement. (See Brown and Beatty, Canadian Labour Arbitration, 2nd edition (Aurora, 1984) at pp 549-52.) Each case must, however,

necessarily turn on the language of the collective agreement in question, having regard to the purpose of the payments provided therein.

Article 13.6 imparts to employees the protection of holiday pay. It acknowledges the right of an employee to enjoy the time available to him or her on a holiday without incurring any loss of regular earnings. Article 13.9, on the other hand, addresses the special circumstance of the employee who is inconvenienced by being required to work on a holiday. In respect of that shift the employee is entitled to the benefit of his or her normal holiday pay in addition to time and one-half for the hours actually worked on the holiday.

The circumstance of the grievor is somewhat anomalous in that he was scheduled to work two separate shifts on the August 3 statutory holiday. In respect of the first shift he was treated as any other employee, and had the benefit of eight hours' pay at straight time for the shift that he was not required to work. He did, nevertheless, suffer the inconvenience of being required to work on the holiday, albeit on a later shift. If the position advanced by the Company were to obtain, the grievor would receive no monetary compensation for the inconvenience of being required to work on the 23:55-07:55 shift.

The Arbitrator can see nothing in the purpose of these provisions, or indeed in the strict language of Articles 13.6 and 13.9 to suggest that an employee in the circumstance of the grievor should not have been afforded the full protection of these provisions in respect of both shifts. The payment of eight hours of straight time to the grievor for the second shift would not constitute a duplication of the payment to him of the eight hours at straight time which he received for the first shift. On the contrary, it is a separate bonus to which he, or any employee, is entitled for the inconvenience of being required to work a tour of duty on the holiday. Consequently, the payment of the grievor's claim for the eight hours of straight time for the second shift which he did work does not constitute a pyramiding of benefits as contended by the Company.

The above conclusion is also supportable upon an interpretation of Article 13.9. As a general matter employees are scheduled to work a single shift in a working day. Viewed against that background the provision for the payment to an employee of "the pay provided in Clauses 13.6 and 13.7" which by definition is pay for a shift not worked would be contradictory on its face. The better view appears to be that the parties intended by reference to Clause 13.6 to acknowledge that an employee who is required to work on a holiday is to be guaranteed a premium of eight hours pay at straight time for the shift worked, in addition to the time and one-half payable under Article 13.9. The Arbitrator finds that the foregoing analysis is further supported by the material submitted by the Union which demonstrates that, according to the Company's interpretation, Mr. Wright would have received eighty hours straight time in a pay period without a statutory holiday while receiving only seventy-two hours at straight time if he had not been required to work either shift on a general holiday falling within the same pay period. In the Arbitrator's view the Union's position, which is consistent with the premise that an employee is not to lose income because of a holiday,

is more compelling.

For the foregoing reasons the grievance must be allowed. Mr. Wright's claim to the payment of eight straight time hours' pay in respect of his tour of duty worked on the 23:55-07:55 shift on August 3, 1987 shall therefore be paid to him forthwith. I remain seized of this matter in the event of any further dispute between the parties in respect of the implementation of this award.

February 17, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR