CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1986

Heard at Montreal, Tuesday, 9 January 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of D. Snedden for General Holiday payment, August 3, 1987.

JOINT STATEMENT OF ISSUE:

Trainman D. Snedden was in assigned service employed as a Brakeman in Regular Freight Service between Steelton (Sault Ste. Marie) and Hawk Junction.

On July 29, 1987 Trainman Snedden requested to be off from July 31, 1987 to August 2nd, 1987 and was granted his request.

At 0745 hours on August 3, 1987, Trainman Snedden booked OK for duty and submitted a General Holiday ticket for Monday, August 3, 1987.

The Organization contends that Trainman Snedden was available for duty and is entitled to General Holiday pay for Civic Holiday August 3, 1987.

The Company contends that Trainman Snedden was not available for his regular assigned run on August 3, 1987, and has declined payment of General Holiday pay for that day.

FOR THE UNION:	FOR THE COMPANY:
(Sgd) J. SANDIE	(Sgd) V. E. HUPKA
GENERAL CHAIRPERSON	for: VICE-PRESIDENT - RAIL

There appeared on behalf of the Company:

V. E. Hupka	- Manager, Industrial Relations, Sault Ste. Marie
N. L. Mills	- Superintendent, Transportation, Sault Ste. Marie
J. N. Gardner	- Labour Relations Officer, Sault Ste. Marie

And on behalf of the Union:

J. H. Sandie	- General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

The material establishes that Trainman Snedden was regularly assigned on Trains 11 and 10 between Steelton and Hawk Junction, return, on a six-day rotation. His assignment would travel from Steelton to Hawk Junction on one day, returning the next. The material establishes that during his leave of absence the grievor's regular assigned run departed Steelton to Hawk Junction on August 2, 1987. When, following the conclusion of his leave he booked on duty for August 3, 1987, his regular assignment was scheduled out of its away-from-home terminal at Hawk Junction. The Company submits that on that basis the grievor was not in fact available for his regularly assigned trip on that date. Its position is that assigned trainmen who book off for their assignment commencing on the day before a general holiday are in fact not available for work on the holiday, a precondition to qualifying for holiday pay.

Article 89(2) provides, in part, as follows:

> 89.2 In order to qualify for pay on any of the holidays specified in Section 1, an employee shall have completed 30 days of continuous employee relationship and in addition:
>
> (a) shall commence a shift or tour of duty on the general holiday;
>
> (b) shall be entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday;
>
> and
>
> (c) unless cancelled, shall be available for duty on such holiday if it occurs on one of his work days excluding vacation days.

Based on the Joint Statement, the issue in this proceeding is whether Mr. Snedden was "available for duty" on the holiday.

The issue in the instant case is indistinguishable from that decided in CROA 1613. In that award it was found that a conductor who booked off sick at Thunder Bay on December 26, 1983, and booked back onto the working board on December 27, 1983 was available for duty within the terms of a collective agreement provision similar to Article 89(2) in the instant case. In that case the Company argued unsuccessfully that because the grievor could not join his crew at an away-from-home terminal he must be viewed as unavailable. In that case the Arbitrator reviewed the language of another collective agreement which specifically addressed the circumstance of employees who book off on the day before a general holiday and thereby make

themselves unavailable for a return movement, expressly deeming such persons to not be available for the purposes of holiday pay. The arbitrator found that the absence of any such language in the collective agreement then at hand supported the position of the Union.

In my view the same considerations apply in the instant case. There is nothing in the terms of Article 89(2) in the instant Collective Agreement which requires that there must be work available to the employee as a precondition to claiming holiday pay. Rather, the employee need only establish, among other conditions, that he or she is "available for duty on such holiday". It was plainly open to the parties to the instant agreement to negotiate language to a different effect, as found in CROA 1123. They have not done so, and it is not open to the Arbitrator to amend the terms of their Collective Agreement.

For the foregoing reasons the grievance must be allowed. The claim of Trainman Snedden for the payment of holiday pay on August 3, 1987 shall be paid by the Company forthwith.

January 12, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR