

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2078

Heard at Montreal, Thursday, 15 November 1990

Concerning

ALGOMA CENTRAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for proper payment of General Holiday pay for Conductor Mazzonello and crew for Remembrance Day November 13, 1989.

JOINT STATEMENT OF ISSUE:

Conductor L. Mazzonello and crew were assigned to the Northern Subdivision handling Trains No. 5 and 6 to Hearst, Ontario, and Oba turns as required with their Home Terminal at Hawk Junction, Ontario.

As a result of customer requirement it was necessary to deviate from the normal schedule and this crew was requested to handle an extra train to Hearst, Ontario, Saturday November 11, 1989. The crew was given the option of staying overnight at Hearst, Ontario or returning to their Home Terminal at Hawk Junction. The crew elected to return to their Home Terminal.

All three (3) crew members were entitled to be compensated for General Holiday Pay having satisfied the requirements of the Collective Agreement.

The Union contends that since the crew did not book off at Hearst and in accordance with Article 9(a) that their payment from Hawk Junction to Hearst to Hawk Junction is one tour of duty. Further, in accordance with Article 89 5(1)(b) they should be paid accordingly. The Organization contends there is no past practice.

The Company has declined the payment as presented and the crew were compensated in accordance with Article 89 5(1)(b) of the Collective Agreement and past practice.

FOR THE UNION:

(SGD) J. H. SANDIE
GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD) V. E. HUPKA
for: PRESIDENT -- RAIL

There appeared on behalf of the Company:

V. E. Hupka

-- Manager, Industrial Relations, Sault
Ste. Marie

J. N. Gardner

-- Labour Relations Officer, Sault Ste.
Marie

And on behalf of the Union:

J. H. Sandie

-- General Chairperson Sault Ste. Marie

B. Marcolini

-- President, UTU--Canada, Ottawa

AWARD OF THE ARBITRATOR

Article 89 5(1)(b) provides as follows:

5(1) An employee qualified under Section 2 hereof and who is not required to work on a general holiday shall be paid in accordance with the following:

...

(b) A Conductor, Baggage man, Brakeman or Spare Board Trainman shall be paid an amount equal to his earnings, exclusive of overtime, for the last tour of duty he worked prior to the general holiday.

The material before the Arbitrator establishes beyond controversy that Conductor Mazzone and crew worked in continuous duty from Hawk Junction to Hearst and return to Hawk Junction. While they had the option to elect to book off duty at Hearst, and the Company had the option of taking them off duty, however briefly, that did not transpire. In the circumstances the Union maintains that the last tour of duty worked by the crew was the full return trip of 310 miles, and it claims that that is their entitlement in respect of payment for the general holiday which followed. The Company submits that the last assignment given to the crew constitutes its last tour of duty, which is to say the return trip from Hearst to Hawk Junction.

The time which an employee is on duty is a matter which is generally within the control of the Company. Within a period of duty various assignments can be given to running trade employees. In these circumstances the Arbitrator must take the language of the Collective Agreement as he finds it. As the facts disclose that the grievors did not go off duty at any time from their departure from Hawk Junction until their return to their home terminal at that location, I cannot avoid the conclusion that that single and uninterrupted period of work constituted their last tour of duty prior to the general holiday. Absent language in the Collective Agreement to indicate that the parties intended that holiday pay is to be calculated on the basis of the last assignment worked prior to the general holiday, the Arbitrator cannot sustain the interpretation of the Company.

For the foregoing reasons the grievance is allowed. The grievors are to be compensated on the basis of 310 miles for the general holiday, subject of course to allowance for the 199 miles which has already been paid to them.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR