CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2247
Heard at Montreal, Tuesday, 14 April 1992
concerning
QUEBEC NORTH SHORE & LABRADOR RAILWAY
and
UNITED TRANSPORTATION UNION
DISPUTE:
Interpretation of Article 8.10.
JOINT STATEMENT OF ISSUE:
The Union grieved alleging that an employee returning from vacation should be paid at the rate of time and one half on Saturday and double time on Sunday for hours worked even if the employee was scheduled to work.
The Railway rejected the grievance and maintained that Article 8.10 was not violated.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) B. ARSENAULT
(SGD.) A. BELLIVEAU
GENERAL CHAIRMAN
MANAGER, HUMAN RESOURCES
There appeared on behalf of the Company:
D. Manzo
Counsel, Montreal
A. Belliveau
Manager, Human Resources, Sept-Iles
A. Robertson
Officer, Human Resources, Labrador City
And on behalf of the Union:
R. Cleary
Counsel, Montreal
A. Arsenault
General Chairman, Sept-Iles
F. Locke
Local Chairman, Labrador City
S. Callaghan
Representative, Locomotive Engineers, Sept-Iles

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that there was an exchange of correspondence between the parties in the autumn of 1976, concerning the interpretation and application of article 8.10 of the collective agreement. In a letter dated November 4, 1976, Superintendent G.A. Dolliver responded to Local Chairman Donald Mclean, advising him in part ``... I am informed that your interpretation of article 8.10 is correct.'' The superintendent went on to advise Mr. McLean that his claim for overtime rates was allowed. Significantly, that communication was copied to a number of Company officers, including Mr. Albert Belliveau, the Manager of Human Resources who signed the Joint Statement in the instant case. The interpretation advanced by Mr. McLean, and accepted by the Company in its letter of November 4, 1976 was expressed, in part, as follows in a letter from Mr. McLean to Mr. Dolliver dated September 27, 1976:

Article 8:10 of the Collective Working Agreement states that for computing overtime the days an employee was on vacation will be calculated as days worked as if the employee had not been on vacation.

I was on vacation until August twenty-sixth and returned to work on August twenty-seventh, which was a Friday. I worked through until the following Friday without a rest day. According to Article 8:10 of the Collective Agreement that vacations days be calculated as days worked for the purpose of calculating overtime. I should have gotten time and one-half for Saturday and double time for Sunday because I had accumulated fifty-six (56) hours up to and including Sunday. This is the procedure for I.O.C.C. employees under Article 8:10 and it also applied to us when we were I.O.C.C. employees.

The material discloses that the interpretation advanced by Mr. McLean, and accepted by the Company, was applied, without apparent qualification or exception from 1976 to the time of the instant grievance. It followed a letter to the Union signed by Superintendent of Labour Relations Andrew Robertson, dated February 13, 1991, advising that the Company would henceforth apply a different interpretation of the article. It is common ground that the interpretation which the Company seeks to apply is consistent with a different interpretation which has been applied for many years to the same language in separate collective agreements between the Iron Ore Company of Canada and United Steel Workers of America. In essence, the position of the Company is that the interpretation previously applied was in error, and that the Company is within its rights to now issue a directive to correct that error. Its Counsel submits that the language of article 8.10 is clear and unequivocal, and that in the circumstances there can be no reference to extrinsic evidence for the purposes of its interpretation or application.

The Arbitrator has some difficulty with that submission. It is well established that extrinsic evidence can be admitted, not only for the purpose of resolving a patent ambiguity in the language of a collective agreement provision, but also for the purpose of disclosing the existence of a latent ambiguity in the operation of a contractual provision, which might not be apparent on its face. There is, as Counsel for the Union suggests, room for uncertainty as to what constitutes an employee's ``regular scheduled week'' when he or she returns from a vacation, particularly in the circumstance, which does happen on occasion, where the employee is then transferred from one shift schedule to another. The Arbitrator is satisfied that one of the purposes of the interpretation advanced in the letter of Mr. McLean in 1976, and accepted by the Company, was to avoid uncertainty and problems in relation to that circumstance. In the result, the parties agreed, both through the exchange of the letters, and through the consistent application of the collective agreement, over many subsequent renewals, that all vacation days are to be calculated as days worked for the purposes of computing overtime within the terms of article 8.10 of the collective agreement. In these circumstances it is immaterial that the language of the article might, without more, be susceptible of a different interpretation, or indeed that a different employer and a different trade union have evolved a contrary practice with respect to the application of identical language in another agreement.

For the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the interpretation of article 8.10 expressed in the letter of Mr. Donald McLean, dated September 27, 1976 is the mutually accepted meaning which governs the application of that provision, and that all vacation days taken during the week of an employee's return from vacation are to be treated as days worked in the calculation of the employee's entitlement to overtime pay. The Arbitrator directs that all affected employees be compensated accordingly and remains seized of the grievance in respect of any possible dispute between the parties relating to that issue.

April 16, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR