CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2506

Heard in Montreal, Tuesday, 12 July 1994
concerning
CANADIAN NATIONAL RAILWAY COMPANY

and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Claim of Locomotive Engineer S.D. Macleod of Vancouver, B.C., for 362 miles for general holiday pay for December 25 and 26, 1990

JOINT STATEMENT OF ISSUE:

Locomotive Engineer Macleod was ordered at 17:00 for train 770 from Robert's Bank to Boston Bar on December 23, 1990. The train departed Robert's Bank at 0105 on December 24 and the crew was relieved at Pratt and returned to Thornton Yard. Locomotive Engineer Macleod was paid 362 miles as per Note (2) of paragraph A in article 28.8 of agreement 1.2 for the entire trip from Robert's Bank to Boston Bar and return to Thornton Yard. He submitted duplicate tickets for the 362 miles for each of his holiday tickets on December 25 and 26, 1990.

The holiday ticket was cut 133 miles each and Locomotive Engineer Macleod was paid 249 miles for each of his holiday tickets, December 25 and 26.

The Brotherhood contends that Locomotive Engineer Macleod is entitled to an amount equal to his earnings, exclusive of overtime, for the last tour of duty worked by him prior to the general holiday as outlined in article 79.8(b) of agreement 1.2

FOR THE BROTHERHOOD: FOR THE COMPANY:
(SGD.) W. A. WRIGHT (SGD.) M. HEALEY
GENERAL CHAIRMAN FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Dixon – System Labour Relations Officer, Montreal
J. T. Torchia – Manager, Labour Relations, Montreal
V. J. Vena – Coordinator, Transportation, Montreal
D. Baril – Observer

And on behalf of the Brotherhood:

W. A. Wright – General Chairman, Saskatoon
M. Simpson – Vice-General Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The instant grievance turns on the interpretation and application of article 79.8(b) of the collective agreement, which provides as follows:

> 79.8(b) Holiday pay for an employee qualified under paragraphs 79.3 and 79.6 shall be an amount equal to an employee's earnings, exclusive of overtime, for the last shift or tour of duty worked by him prior to a

general holiday provided that such amount shall not be less that the equivalent of a minimum day in the class of service performed on that shift or tour of duty.

The facts are not in dispute. December 25 and 26 are general holidays for the purposes of article 79.8(b). On December 23, 1990 Locomotive Engineer Macleod was ordered for 17:00 for Train 770 scheduled to travel from Robert's Bank to Boston Bar. The crew was delayed at Robert's Bank for seven hours and twenty-five minutes, as their train had not completed dumping operations at that location. The grievor filed a notice requesting rest, as he was entitled to do. His train departed Robert's Bank at 01:05 hours, on 24 December 1990, and the crew was relieved at Pratt, some twenty-one miles from Robert's Bank, whereupon they were taxied from Pratt back to Thornton Yard, going off duty at 02:05 hours. It is not disputed that the distance travelled by the grievor both in deadheading from Thornton Yard to Robert's Bank, operating Train 770 from Robert's Bank to Pratt and deadheading from Pratt to Thornton Yard totals 159 miles. It is also agreed that under the terms of article 28.8(a)(ii) Note 2 the grievor was properly paid for 362 miles. Of those, 159 miles were travelled while 203 miles were miles which the grievor would have otherwise earned, and which were credited to him in accordance with article 28.8(a)(ii) Note 2.

Article 28.8 reads as follows:

28.8 (a) When rest is booked en route, locomotive engineers will, at the Company's option:

(i) be relieved of duty and provided with accommodations either in a company facility or an available hotel or motel; or

(ii) be replaced and deadheaded immediately either to the point for which ordered or to the home terminal where they will be relieved of duty.

Note 1: When deadheaded in the application of sub-paragraph 28.8(a)(ii), locomotive engineers will be compensated on a continuous time basis for service and deadheading (miles or hours whichever is the greater) as per class of service.

Note 2: In the application of sub-paragraph 28.8(a)(ii), locomotive engineers who are returned to the home terminal after being replaced on a trip to the away-from-home terminal will be paid, in addition to the earnings specified in Note (1) above, the additional actual road miles they would have otherwise earned for the round trip had they not been replaced.

The Company asserts that under the terms of article 79.8(b) the grievor's holiday pay is to be calculated only on that portion of his earnings for the 23rd of December attributable to actual work performed. It submits that he should not be paid any amount for the holiday based upon the penalty payment of 203 miles which he received for December 23rd as monies he would have otherwise earned for operating from Pratt to Boston Bar and return to Thornton Yard. It takes the position that the miles payable under article 28.8 are "constructive miles", rather than worked miles, and are therefore not payable as part of an employees' earnings, exclusive of overtime, for the last shift or tour of duty prior to a general holiday, within the contemplation of article 79.8(b) of the collective agreement.

The Arbitrator has some difficulty with the position advanced by the Company, in light of the specific language of the collective agreement, and the general context within which wages are paid to locomotive engineers. Firstly, as noted by the Brotherhood's representative, the "earnings" of an employee may be comprised of a number of elements, such as preparatory time, terminal detention and inspection time, for example, which are payable under articles 5, 6 and 11, respectively. These provisions involve payment for time spent, and not for miles worked, which is computed within an employee's earnings for the purposes of article 79.8(b) of the collective agreement.

Most significantly, the only exclusion from earnings which is addressed within the language of article 79.8(b) is overtime. There is, as the Brotherhood notes, no reference within the terms of article 79.8(b) to the exclusion of constructive miles, penalty payments or any other payments, save overtime, for the purposes of computing an employee's holiday pay. It should be stressed that for the purposes of this award it is unnecessary to deal with the hypothetical circumstance raised by the Company, involving an employee claiming for a shift where he or she in fact performed no work, such as where a claim is filed in respect of jury duty or bereavement leave. Those analogies, in any event, are not comparable to the case at hand, where the grievor was on duty for some nine hours.

The issue of interpretation turns, of course, upon the use of the word "worked" within article 79.8(b). It is axiomatic that an arbitrator is bound to interpret words in light of their normal grammatical meaning, absent any other indication in the text of an agreement. The word "worked" appears in the article within the context of the expression "... an employee's earnings ... for the last shift or tour of duty worked by him ..." The interpretation advanced by the Company seeks to have the word "worked" qualify the word "earnings". In my view that interpretation involves an unnatural stretching of the words. I am satisfied that the word "worked" as it appears in the sentence in question was intended to qualify the words "last shift or tour or duty". The question, in other words, involves identifying the last shift or tour of duty upon which an employee worked, prior to a general holiday.

In the case at hand there can be no dispute that the last tour of duty worked by Locomotive Engineer Macleod was that of December 23, 1990. His earnings, exclusive of overtime for that shift, totaled compensation for 362 miles. In the Arbitrator's view the language of article 79.8(b) of the collective agreement is not ambiguous, and in the circumstances Mr. Macleod is entitled to holiday pay for December 25 and 26 on the basis of those earnings, as submitted by the Brotherhood. If, as the Company maintains, that result yields certain anomalies in the remuneration of employees it may, to some extent, be remedied by the exercise of the Company's discretion in the administration of article 28.8. It may also be addressed in negotiation between the parties. For the purposes of this grievance, however, I must take the collective agreement as I find it.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company violated article 79.8(b) of the collective agreement, and directs that Locomotive Engineer Macleod be compensated accordingly for his holiday tickets of December 25 and 26, 1990.

15 July 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR