

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3067

Heard in Montreal, Wednesday, 15 September 1999
concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

UNITED TRANSPORTATION UNION

DISPUTE:

A claim on behalf of Motor Coach Operator, T. Kopsaftis for pay at time and onehalf under article 28.5 of the collective agreement for work performed on the general holiday.

JOINT STATEMENT OF ISSUE:

On Thanksgiving Day, October 12, 1998, which was also his assigned rest day, Motor Coach Operator, T. Kopsaftis operated Trip 1 from North Bay to Kirkland Lake and returned on Trip 4 to North Bay. He was paid 540 kilometres at time and one-half. He was also paid 687 kilometres at straight time, as this was the value of his regular assignment, for the general holiday.

The Union contends that Mr. Kopsaftis should have been paid 540 kilometres at time and one-half for working October 12, a general holiday. The Union requests a payment in the amount of \$41.82 which represents the amount necessary to fulfil the requirements of the collective agreement.

The Company maintains that Mr. Kopsaftis has received the proper payment for the work performed and denied the claim.

FOR THE UNION:

(sGo.) P. G. KONING

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. J. RESTOULE

FOR: DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. J. Restoule	- Manager, Labour Relations, North Bay
L. Marcella	- Director, Human Resources, North Bay
T. McCarthy	- Training Officer, North Bay
D. Rochon	- Assistant Operational Manager - Bus, North Bay

And on behalf of the Union:

P. G. Koning	- General Chairman, North Bay
Wm. Ross	- Local Chairperson - Bus, North Bay
K. L. Marshall	- General Chairman (ret'd), North Bay

AWARD OF THE ARBITRATOR

The instant grievance turns on the application of articles 28.5(a) and (b) of the collective agreement, which read as follows:

28.5 (a) An employee qualified under article 28.2 and who is not required to work on a General Holiday shall be paid in accordance with

the following:

(i) An assigned employee will be paid the wages he/she would have earned at his/her normal rate of pay for his/her normal hours of work, exclusive of overtime.

(H) A spareboard or extra employee will be paid 384 kilometres at his/her operator's rate of pay.

(b) An employee qualified under article 28.2 and who is required to work on a General Holiday shall at the option of the employee:

(1) Be paid, in addition to the pay provided in article 28.5(a) at a rate equal to one and one-half times his/her regular rate of wages for the assignment worked by him/her on that holiday. When more than one assignment is worked by an employee on a General Holiday, the provisions of this clause (i) shall apply to the first assignment only; or ...

Sub-paragraph (b) goes on to provide for floating the holiday rather than receiving premium payment, at the option of the employee.

In the instant case the Thanksgiving Holiday fell on the grievor's scheduled day off. He worked the day voluntarily, as a result of which the Company paid to him his straight time wages at the rate of 687 kilometres in accordance with article 28.5(a)(i). On that basis the Company submits that the grievor was properly paid both for his day off, and for the general holiday, which is clearly a day on which he was not required to work. The Company further paid 540 kilometres at time and one-half for the work actually performed by him on the Thanksgiving Holiday. In the result the grievor received double time and onehalf for the day in question.

The Union submits that the grievor should be entitled to triple time. It claims that he should be entitled to 540 kilometres at time and one-half on the basis of article 28.5(b)(i) for work performed on a rest day that falls on a general holiday. It submits that he should be entitled to another 540 kilometres at time and one-half for a rest day that falls on a holiday, also pursuant to article 28.5(b)(i).

The Arbitrator cannot sustain the Union's interpretation. In my opinion the Company is correct in asserting that the Union's interpretation ignores the words "... in addition to the pay provided in Article 28.5(a) ..." which appear in article 28.5(b)(i). It appears to me that what the totality of article 28.5 provides is a layering of wage payments which are interrelated, and which properly apply to the grievor's circumstances. He was not required to work on the general holiday, and to that extent is entitled to the straight time payment contemplated in article 28.5(a)(i). In addition, given that he did work on the holiday and met the threshold work qualifications of article 28.2, he was also entitled to the payment for the work performed on the holiday at a rate of time and one-half. That

is what the Company in fact provided to him.

The Union's submission would involve a double application of article 28.5(b)(i) in a manner which is inconsistent with the language of that very provision. As is clear from the segment quoted above, the payment contemplated thereunder is to paid only as additional to a straight time payment for work which the employee would normally have earned at his regular job but for the holiday. The Union has pointed to no other provision which deals with the circumstance which arises in this case, namely where there is an overlap between a statutory holiday and an employee's scheduled day off where the day in question is in fact worked. I am compelled to agree with the Company that the Union's analysis would result in a pyramiding of benefits in a manner not contemplated by the collective agreement and previously rejected by this Office (see, e.g., CROA 65).

For all of the foregoing reasons the grievance must be dismissed.

September 21, 1999

MICHEL G. PICHER
ARBITRATOR