CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 65

Heard at Montreal, Monday, April 10th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Conductor E.T. Wilson and crew, Ottawa, for 100 miles at through freight rates, October 11, 1965.

JOINT STATEMENT OF ISSUE:

While Conductor E.T. Wilson and crew (Brakemen O.T. Hennessey and D.S. Scharf) were assigned in work train service on the Beachburg Subdivision), their assignment was cancelled for Thanksgiving Day, October 11, 1965, and each employee received a holiday with payment in the amount of 100 miles at through freight rates. In addition to the general holiday payment received, each employee claimed guarantee payment in the amount of 100 miles at through freight rates.

Payment of the guarantee claims was declined and the Brotherhood alleges that article 14, rule (b) of the collective agreement was thereby violated by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. R. ASHMAN	(SGD.) E. K. HOUSE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal
R. Wilson	– Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto

AWARD OF THE ARBITRATOR

The claim for this crew is based upon article 14(b) and article 152 A. Article 14(b) reads:

> Regularly assigned wayfreight, work and construction trainmen who are ready for service the entire month, and who do not lay off of their own accord, will be guaranteed not less than one hundred (100) miles, or eight (8) hours, for each calendar working day, exclusive of overtime (this to include legal holidays). The guarantee is predicated on the men being both ready for service the entire month, and entitled to the assignment during the entire month, or for the portion of the month the assignment is in effect …

The reference to "holidays" at the end of the first sentence was said to be present in the 1929 edition of the collective agreement, although trainmen did not receive holiday-with-pay benefits until 1965. That was when article 152-A came into effect, providing for seven definite paid holidays and one, namely Remembrance Day, with a qualified status. The list included the holiday in question, namely Thanksgiving Day. There was no dispute that these claimants qualified for the holiday as provided for in section 2-B of article 152-A.

For the Brotherhood it was claimed that 152-A does not indicate that General Holiday payments will replace the daily guarantee payment provided under 14 (b).

Anticipating that management would suggest that because Item #9 of article 152-A states that payments under this rule will be in addition to the monthly guarantee to employees in suburban service, it therefore infers it will not be paid elsewhere, the representative for the Brotherhood quoted a statement made in **CROA 38**, to the effect:

> It is the language that was inserted in the agreement that must govern.

Because, it was claimed, there is no specific language forbidding payment to other classes of road service, the available language must govern. Again quoting from **CROA 38**, this portion was cited:

> … to read anything additional into this provision would be using arbitration as a means for extending the agreement which the parties have made rather than interpreting and applying its existing provisions.

For the Company it was first reasoned that the reference to holiday in article 14, rule (b) was for the purpose of emphasising that the guarantee therein provided cannot be reduced by reason of one of the "calendar working days" being a general holiday on which no work was required to be performed. Therefore, it was claimed, the guarantee provision was not nullified merely by the fact that this holiday, one of the working days of the assignment, was a general holiday.

Analysing the guarantee rule, it was noted that one element of pay is to be excluded, namely, overtime. The minimum stipulated by the guarantee rule is to be in addition to any overtime earnings.

With reference to the General Holiday article, 152-A, it was claimed only two sections were concerned with guarantee provisions. The first was:

> **9.** Holiday payments under this article to employees in suburban services shall be in addition to the monthly guarantee.

Further,

> **10.** The provisions of this article will not result in a duplicate payment as a result of the application of article 94.

The first of these two stipulates that holiday pay will be in addition to the guarantee to trainmen in suburban service alone. The latter provides it will not be in addition to the guarantee for yardmen. From this the Company representative reasoned that if holiday pay is not to be applied to the guarantee for work trainmen, either the work train guarantee rule, article 14 (b) or the General Holiday article would have specifically made such an exception.

Because article 14(b) is a provision concerned with a guarantee, a well established principle of interpretation may be applied in considering this claim in the light of clause 9 of article 152-A. It is first to be remembered the latter article came into effect long after the former.

When the parties agreed to section 9 of article 152-A, reading, as stated:

> Holiday payments made under this article to employees in suburban service shall be in addition to the monthly guarantee …

they are presumed to have been aware of article 14(b). By only providing that holiday payments should be in addition to the monthly guarantee for those in suburban services, the principle *expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of another – in my opinion has singular application to the interpretation to be placed upon the contents of article 152-A.

Further, what is sought here is a type of pyramiding of benefits. In this respect, while the subject matter was an overtime, rather than a holiday premium, this portion of the judgement of His Honour, Judge Anderson, in a matter concerning **Ault Milk Products and Retail & Wholesale Workers**, is of interest:

> If a contract is open to two interpretations and one interpretation involves pyramiding of overtime and the other interpretation does not involve pyramiding of overtime, a Board of Arbitration, in the absence of specific wording in the contract should accept the interpretation that does not provide for the additional penalty payment by reason of pyramiding overtime.

In my opinion, the basic principle there stated also has application here, because manifestly the parties have not indicated in article 152-A any intention that a pyramiding of benefits flowing from its applicability should occur over and above the monthly guarantee to other than those in suburban services.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR