CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 72

Heard at Montreal, Monday, July 17th, 1967

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of five trainmen for general holiday pay, May 23, 1966.

JOINT STATEMENT OF ISSUE:

Trainmen E.M. Kunder, R.J. McNamara, H.R. Lowe, E.P. Howard and G.N. Gerrie were regularly assigned as brakemen with home terminal at Stratford. On Victoria Day, May 23, 1966, each was called in turn under the terms of article 82, rule (b) of the collective agreement to work as assistant conductor on Train No. 53, which was ordered to leave Stratford at 1300 that date destined Toronto. Each of these employees failed to respond when called for service as a conductor and consequently was not used in any capacity until the trainman used in his place returned to Stratford.

Each of the claimants submitted a time return claiming general holiday pay for May 23, 1966. The Company declined payment of the claims on the grounds that the employees failed to qualify in accordance with the provisions of article 152-A, section 2, clause (c) of the agreement. The Brotherhood alleges that the employees did qualify under that clause.

FOR THE EMPLOYEES:

(SGD.) G. R. ASHMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
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

And on behalf of the Brotherhood:

G. R. Ashman	– General Chairman, Toronto
V. L. Hayter	– Secretary G.G.C., Stratford

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement, the claimants, all regularly assigned brakemen, with their terminal at Stratford, had the trains to which they were regularly assigned cancelled for Victoria Day, May 23, 1966. These employees were qualified as conductors and had established seniority as such.

On Victoria Day each claimant was called in turn under the authority, as the Company maintained, provided in article 82, rule (b) of the collective agreement, to work as an assistant conductor on Train No. 53. This train left Stratford, destined for Toronto at 1300. Only one of the claimants could be reached on these calls and he refused to take the assignment.

Victoria Day is one of the holidays specified in a provision executed by the parties in May, 1966, as result of negotiations following legislation passed in the House of Commons known as the Canada Labour Code (Standards). This code provided for certain general holidays for employees in industry covered by Federal legislative authority.

It was admitted that the claimants qualified under two of the requirements contained in article 152-A, which is the general holidays article of the collective agreement. The first being that they had completed 30 days of continuous employee relationship or (2) had qualified for wages for at least 15 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday.

Where the parties differed as to the justification for this claim was with respect to the interpretation to be placed upon the word "cancelled" as contained in subsection (c) of article 152-A, reading:

> **(c)** Unless cancelled, shall be available for duty on such holiday if it occurs on one of his work days excluding vacation days.

The Representative for the Brotherhood claimed the word "cancelled" in subsection (c) had application to the cancellation that occurred with respect to the claimants' regular assignments for Victoria Day. The Company representative urged that the word was intended to refer to the employee, not to his regular assignment; that unless available for work on a holiday as required in other provisions in the collective agreement he failed to meet the requirements of subsection (c).

The Representative for the Brotherhood pointed to the fact that article 82(b) provides a penalty for failure to comply with its requirements. To fail to give holiday pay in the circumstances described would be to place these employees, as he described it, "in double jeopardy."

For the Company it was maintained that article 82, rule (b) is essentially an arrangement to provide relief employees to fill conductors' vacancies, thus providing for competent employees who may be required on short notice.

The second paragraph of article 53, headed "Trainmen Not Considered Absent" was pointed to by the Company as being required to be read with article 82(b) to ascertain what the parties had intended in this respect. It reads:

> Except as otherwise provided in article 82 (b), trainmen assigned to regular runs will not be considered absent from duty after being relieved on arrival at final terminal at end of day's run until again required for their regular assignment. If their services are required in the interval, they will be notified, and if so notified and not used, will be paid a minimum day, unless cancelled prior to the starting time of their regular assignment if it were being worked on that day, in which event they will be allowed half a day.

It was submitted, except as provided by article 82(b) that paragraph essentially relieves regularly assigned trainmen, unless notified to the contrary, from the need to be available for work on other than their assignments. That relief was said to be limited by the requirements of article 82, rule (b), reading:

> At terminals where a conductors' spare board (as per article 77) is not maintained, or where the conductors' spare board is exhausted, such vacancies will be filled by the senior qualified conductor in the terminal not working as such who is available for service two (2) hours before a conductor is required to report for duty and who must accept such service, such a conductor will be considered available after he has been relieved at the final terminal at end of trip or day's work (unless proper leave of absence has been obtained) provided that when he books off duty for rest in excess of fourteen (14) hours, he will be considered as available after he has been off duty fourteen (14) hours. In the event that the senior available trainman not working as a conductor

> fails to respond when called for service as a conductor, he will not be considered as available for service in any capacity until such time as the trainman used as a conductor in his stead returns to the terminal. Trainmen liable for service as conductor may be held off their assignment to meet the requirements of the service when it is necessary to take such action to ensure that such trainmen will be available two (2) hours prior to the time required to report for duty as conductor.
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> **NOTE:** In the application of this rule (b), a classed conductor assigned as baggageman, brakeman or flagman, who books off duty for any reason and subsequently books on duty prior to the return of his regular assignment, will not be considered as available for service until return of his regular assignment, except when there is no other conductor available.

It was urged for the Company that considered in the light of article 82, rule (b) the second paragraph of article 53 takes on added meaning for a regularly assigned trainman who is a qualified conductor and is not working as a conductor. Such a trainman is required to hold himself available between trips on his regular assignment and will be considered absent if he does not so remain available.

Dealing with the suggestion by the Brotherhood that the cancellation of the claimants' assignments on this day removed that day from the "work day" category, it was submitted by the Company that the "work days" of an assigned employee are not necessarily limited to the days on which his assignment is scheduled to operate. If he is a qualified conductor not working as such, he can, under the provisions of article 82, rule (b), be required to fill temporary conductor vacancies between runs on his regular assignment.

It was urged that article 14, rule (d) strengthens this reasoning. It provides that in order to complete guarantees, crews may be worked in service other than their regular assignments when it will not interfere with their regular assignments. A work day is not limited to a day on which an employee's assignment is scheduled to work, it was suggested; rather it is a day on which the employee himself might, under provisions of the collective agreement as a whole, be required for duty.

It was considered significant that subsection (c) does not stipulate "available for duty on his regular assignment"; that it speaks simply of "duty" which could, for an assigned employee, be duty other than his regular assignment.

It was finally submitted for the Company that article 152-A could not be considered as an isolated provision; that the general holidays article does not represent an entity which can function independently from the rest of the collective agreement. That this is so was indicated, it was claimed, by at least six specific references to particular Sections of the Agreement in article 152-A, as well as to many references to rates of pay.

It is a basic rule of interpretation that a general provision is superseded by a special provision. A careful consideration of the representations made by the parties, and study of the applicable provisions, convinces that article 152-A(c) is a general provision that cannot be considered apart from the special provisions represented by article 53 and article 82, rule (b), having special application to the type of employee concerned in this claim. In other words, the latter two provisions are special exceptions to the general scope to be given to the word "cancelled" in article 152-A(c).

It is to be remembered that the parties are considered to be aware of the provisions of articles 53 and 82, rule (b) when article 152-A was negotiated and finally executed. That was the time to reduce their effect, if this could be accomplished, not through arbitration.

For these reasons these claims are denied.

(signed) J. A. HANRAHAN
ARBITRATOR