CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 80

Heard at Montreal, Monday, October 16th, 1967

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claim of Brakeman A. Nelson, Hawk Junction, Ontario for 100 miles at through freight rates, October 10, 1966.

JOINT STATEMENT OF ISSUE:

While Brakeman A. Nelson was assigned in Work Train Service, the assignment was cancelled for Thanksgiving Day, October 10, 1966 and he received holiday payment in the amount of 196 miles at through freight rates. In addition to the general holiday payment received he claimed guarantee payment in the amount of 100 miles at through freight rates.

Payment of the guarantee claim was declined and the Organization alleges that article 14(a) of the collective agreement was thereby violated by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) C. E. MCCLELLAND	(SGD.) J. A. THOMPSON
GENERAL CHAIRMAN	VICE-PRESIDENT – RAIL OPERATIONS

There appeared on behalf of the Company:

H. R. Wootton	– Manager Rail Operations, Sault Ste. Marie
P. J. Leishman	– Supervisor Personnel, Sault Ste. Marie

And on behalf of the Brotherhood:

C. E. McClelland	– General Chairman, Sault Ste. Marie

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Issue, this claim is based on the Brotherhood's interpretation of article 14(a) of the collective agreement. It reads:

> **(a)** Regularly assigned wayfreight, wreck, 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. If through act of Providence it is impossible to perform regular service this guarantee does not apply.

Brakeman A. Nelson was assigned to a work train which operated during October, 1966. The assignment was cancelled for Thanksgiving Day, October 10, 1966, and the employee did not work that day.

The claimant qualified for general holiday pay as required under Section 2 of the General Holiday Agreement and was paid holiday pay on the basis of his last tour of duty, 196 miles at through-freight rates.

As indicated, Brakeman Nelson claimed an additional 100 miles at through freight rates of pay, relying upon article 14(a).

The representative for the Brotherhood quoted article 89 "General Holidays" and reasoned that by dealing only with yardmen in its last paragraph, it was intended that statutory holiday pay should not be applicable in making up the daily or monthly guarantees to other employees. The last paragraph reads:

> … The provision of this article will not result in a duplicate payment as result of the application of article 88.

Article 88 commences:

> Regularly assigned yardmen on permanent assignments will be paid not less than five days in any work week, exclusive of overtime. Extra service may be used to make up the guarantee …

For the Company it was maintained that this question had been decided by this Arbitrator in [CROA] **Case No. 65**. That was a matter concerning the Canadian National Railways (St. Lawrence Region) and the Brotherhood of Railroad Trainmen. It was stated that the General Holiday Agreement had been copied from the Canadian National Agreement insofar as it was applicable to this railway.

The Company's representative first submitted there was nothing in the collective agreement preventing the use of general holiday pay to make up the guarantee described in article 14(a).

Further, it was submitted, article 14(a) specifically excludes overtime and overtime alone; that if holiday pay is not to be applied to the guarantee for work trainmen, either the work train guarantee rule or the General Holiday Agreement would have specifically made such an exception.

Examples of this in other provisions in the collective agreement were cited:

> **Article 1(B)**
> … The above payment will not be used to make up the monthly guarantee.
>
> **Article 1(C)**
> … Such payments will not be used to make up the monthly guarantee.

Contrary examples were also quoted:

> **Article 3(a)**
> … Time so paid may be used to make up the basic day and monthly guarantee.
>
> **Article 7(a)**
> **NOTE:** It is understood that payments under article 3(a) and (b), 4, 21, 23 and 24 may be used to the extent necessary to make up the monthly guarantee, but payments under articles 3(c) and 22 may not be so used; and that extra service to make up guarantee relates to passenger service.

In **Case 65** the *ratio decideni* was that if a contract is open to two interpretations and one interpretation involves pyramiding and the other interpretation does not involve pyramiding, 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.

Further, in that case, the principle "*expressio unius est exclusio alterius* – the express mention of one thing implies the exclusion of another" weighed in the result.

In this matter, it is plain that article 14(a) excludes only one type of payment, namely, overtime, from applying on the guarantee there described. I believe it to be the governing provision for this determination, because it is the base upon which the claim is made. It is, therefore, in that provision that justification for this claim would have to be found. As indicated, nothing in its wording indicates the intent of the parties that pay for holidays, as provided in article 89, is to be excluded in computing the guarantee.

For these reasons this claim is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR