

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 87

Heard at Montreal, Monday, November 13th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims of Trainmen and Yardmen at Moose Jaw, Saskatchewan and other points, for general holiday pay for Dominion Day on July 1st, 1967.

JOINT STATEMENT OF ISSUE:

Prior to the Dominion Day general holiday, the Company posted bulletined instructions to all employees as follows:

The Federal Government is observing Monday, July 3rd as the Dominion Day holiday and this day likewise shall be recognized as the holiday under collective agreements governing operating and non-operating employees.

Article 46, section 1, applicable to Trainmen and article 17, clause (d), section 1, applicable to yardmen are identical and read as follows:

An employee, who qualifies in accordance with section 2 hereof, shall be granted a holiday with pay on each of the following general holidays:

New Year's Day
Good Friday
Victoria Day
Dominion Day
Labour Day
Thanksgiving Day
Christmas Day
Remembrance Day,

except that where Remembrance Day is not the holiday most generally recognized in any province or part thereof, either party to this agreement may request substitution thereof, and if agreed, substitution will be made. If the parties fail to agree on which holiday is the most generally recognized the dispute will be submitted to the Canadian Railway Office of Arbitration provided that when any of the above holidays falls on Sunday or Saturday, the day substituted therefore by the Federal Government shall be observed.

Civic Holiday is substituted for Remembrance Day for Trainmen working on assignments or runs, the home terminal of which is in the Province of Ontario.

The Brotherhood contends that the Federal Government did not substitute July 3rd for July 1st to be observed as Dominion Day when a holiday was proclaimed for July 3rd and trainmen and yardmen submitted claims for general holiday pay for July 1st as Dominion Day, in accordance with section 1 of their respective general holiday rules.

The Company contends that the Federal Government did observe July 3rd instead of July 1st as the Dominion Day holiday and declined payment of all claims submitted for general holiday pay for July 1st.

FOR THE EMPLOYEES:

(SGD.) S. MCDONALD
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Ramage – Manager Labour Relations, Montreal
C. F. Parkinson – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

R. T. O'Brien – Vice-General Chairman, Calgary

FOR THE COMPANY:

(SGD.) R. C. STEELE
GENERAL MANAGER, PRAIRIE REGION

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Issue, prior to the Dominion Day general holiday, the Company posted bulletined instructions to all employees as follows:

The Federal Government is observing Monday, July 3rd as the Dominion Day holiday and this day likewise shall be recognized as the holiday under collective agreements governing operating and non-operating employees.

The general holiday rule is quoted in the Joint Statement of Issue. The part thereof having particular significance to this claim reads,

... provided that when any of the above holidays falls on Sunday or Saturday, the day substituted therefore by the Federal Government shall be observed.

July 1st, 1967, fell on a Saturday. It was contended by the Brotherhood that no official proclamation was made by the Federal Government to effect a substitution. Therefore, July 1st, falling on a Saturday, was the effective date for the Dominion Day Holiday.

It was claimed by the Brotherhood that not only had the Federal Government failed to issue a proclamation substituting July 3rd for July 1st as the Dominion Day Holiday, but in Parliament the Prime Minister had stated:

Mr. Speaker, July 1 is still the statutory holiday, Dominion Day, known legally and constitutionally as Dominion Day, but perhaps in view of the fact that this is the one hundredth Dominion Day we might be permitted for one year to call it Confederation Day. July 3 was proclaimed as a public holiday by the federal government so there would be a long week-end on this the one hundredth anniversary of our confederation That was considered to be appropriate. That only has legal effect so far as federal public servants and banks are concerned, but, as an indication, there has been a proclamation of a public holiday, though provincial governments will do as they see fit. I believe some are already taking action in this respect.

A copy of the official proclamation declaring that the 3rd day of July, 1967, should be observed as a public holiday throughout Canada was produced. There was no reference in it to it being in substitution for July 1st, nor was there in fact any reference to it being celebrated as Confederation Day or any other day.

It was further urged that the provisions of the Dominion Day Act, only provides that “the first day of July not being Sunday shall be a legal holiday”. When it is a Sunday, “the second day of July shall be in lieu thereof a legal holiday and observed as such under the name of ‘Dominion Day’”.

For the Company it was explained that the purpose of the rule providing “when any of the above holidays falls on Sunday or Saturday, the day substituted therefor by the Federal Government shall be observed” was to ensure to the greatest extent possible that the railways, where services must be geared to the activities of the industries they serve, will have their employees enjoy the holiday being observed by the majority of industries.

The directive and notice to all employees quoted above was said to emanate on the basis of instructions issued by the Federal Government in respect of its employees. As an example, the following was quoted from the directive of the Department of Transport issued on January 13, 1967, stating in part:

Since Dominion Day and Remembrance Day 1967, fall on a Saturday, employees will be given leave of absence with pay on Monday, July 3rd, 1967, and Monday, November 13th, 1967.

From this it was reasoned that the Federal Government substituted Monday, July 3, 1967, for Dominion Day. It was claimed that an observance and substitution are one and the same insofar as the day observed is concerned.

That July 3rd was also recognized as the day Dominion Day should be observed, the Arbitrator was told that the other running trades unions, namely the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen on the Canadian National, Canadian Pacific and all other railways, whose general holiday rules are identical to those applicable to Trainmen on the Canadian Pacific, had so recognized it.

Further, the Brotherhood of Railroad Trainmen, recognized July 3rd as the holiday for trainmen and yardmen on all railways except the Canadian Pacific under identically worded rules. July 3rd was also recognized as the holiday by all unions representing non-operating employees on all railways in Canada.

As to the claim that the only way in which a substitution can be made is by Royal Proclamation, the Company contended that in the past, on rare occasions, the Government had issued proclamations substituting holidays, but such proclamations have been issued only in respect of the civil service. They have not been of general application. Even though this has occurred in the past, it has been discontinued, and instead directives are now issued under the authority of the Civil Service Act for this purpose.

The representative for the Company produced letters of understanding between railways and brotherhoods having identical wording in their collective agreements, agreeing that the general holiday rule means that the day observed by the Federal Government with respect to its employees should govern.

Of significance in this respect is one produced showing that the Brotherhood of Railroad Trainmen, on November 25, 1966, agreed with the officials of the Canadian National Railways, to this effect:

It is understood that the portion of the general holiday provisions reading: "When any of the above holidays falls on Sunday or Saturday the day substituted therefor by the Federal Government shall be observed" is to be interpreted to mean: "When any of the above holidays falls on Sunday or Saturday the day observed by the Federal Government as the holiday in the Civil Service throughout Canada shall be substituted".

As indicated, no such agreement was made by this Brotherhood with the Canadian Pacific Railway.

The representative for the Company stressed that if the Trainmen had observed the Dominion Day holiday on the Saturday, they would have observed the holiday on a different day than all other railway employees. The degree of "absurdity" resulting, it was contended, is demonstrated by the fact that trainmen and yardmen work with engine crews as a unit. As stated, the union representing engineers and firemen recognized the day observed by the Federal Government in respect of its employees as the holiday. If trainmen and yardmen were to observe a different holiday than that being observed by enginemen and firemen, it was argued, the result would be that on one day the train or yard crew would be on duty without an engine crew and on the other day the engine crew would be available without a train or yard crew. In addition, it was stated, offices such as freight and express sheds, with which trainmen and yardmen have a close working relationship, as well as industry in general would be closed down on the day train and yard crews were on duty.

Reference was made by the Company representative to that portion of **Case No. 3** before the Canadian Railway Office of Arbitration, in which this was stated:

It is also a cardinal rule of interpretation that no instrument should be construed in a manner that would bring about an absurd result. A decision of the Supreme Court of Canada, **Coffin vs. Gillies** (1915) 51 S.C.R. 539, is authority for the proposition that:

In construing a contract the grammatical and ordinary sense of the words should be adhered to, unless that would lead to some absurdity, or inconsistency with the rest of the instrument, in which case the ordinary sense of the words may be modified to avoid such inconsistency.

Having regard to the confused result outlined that would be created between these employees and others with whom they daily work, to avoid the "absurdity" that would follow, we believe the word "substituted" should be modified so as to be read as pertaining to the purpose of the provision, namely, the general observance of the holiday.

Apart from the Prime Minister's statement in the House of Commons, it is clear that the Federal Government issued instructions that applied to all civil services that Dominion Day, 1967, would be observed on Monday, July 3, 1967. Superimposed on that was the intent to celebrate "Confederation Day" on the same day. This, in my opinion, is incidental to the general recognition throughout Canada that July 3rd was the day on which to celebrate Dominion Day. As stated, all Brotherhoods having the same provision, with the exception of this one in relation to the Canadian Pacific recognized and celebrated July 3rd as Dominion Day.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR