

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 119

Heard at Montreal, Tuesday, September 10th, 1968

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 31 of Agreement 5.1 when it compensated Mr. W. T. Steadman, Train Messenger, on the basis of 160 miles per day for three days, November 6, 7 and 8, 1967, While on bereavement leave.

JOINT STATEMENT OF ISSUE:

On November 5, 1967 Mr. Steadman's father passed away and for the purpose of arranging and attending the funeral of his father he was granted bereavement leave.

Mr. Steadman operates as a Train Messenger between Capreol and Armstrong and the actual road mileage for a round trip between these two stations is 1080 miles. He was compensated on the basis of 20 miles per hour, a total of 480 miles for the three days.

The Brotherhood claims that he should have been paid for actual road mileage lost, i.e., 1080 miles.

FOR THE EMPLOYEES:

(Sgd.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(Sgd.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath – Labour Relations Assistant, Montreal
B. Buchanan – Trainmaster – Road Foreman, Toronto

And on behalf of the Brotherhood:

J. A. Pelletier – Executive Vice President, Ottawa
F. C. Johnston – Regional Vice President, Toronto
T. Stol – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

In this case it is agreed that it was necessary for the grievor to arrange and attend the funeral of his father, and that for this purpose he was entitled to bereavement leave pursuant to article 31 of the collective agreement.

Article 31 – Bereavement Leave

An employee shall, after having completed one year of cumulative compensated service, be entitled during each subsequent service year, to leave of absence with pay up to a maximum of three working days in the event of a bereavement or bereavements due to the death of spouse, child or parent who is domiciled with him, such leave to be for the purpose of arranging and attending the funeral of the deceased or for such other requirement that would reasonably have necessitated a working day off duty. A dependent or unmarried child living other than in the employee's residence shall be regarded as domiciled therein.

If a bereavement or bereavements due to the death of spouse, child or parent who does not reside with the employee should occur, leave of absence with pay necessary to attend the funeral will be granted, including reasonable time travelling if required, up to a maximum of three working days in each service year.

Under this provision Mr. Steadman was entitled to leave of absence, with pay, for November 6th, 7th and 8th, 1967. The collective agreement does not specify the meaning of the word "pay" as it is used in article 31. In the case of the great majority of the employees covered by the collective agreement, the question of the pay to which they might be entitled would not create difficulty, since these employees are paid on an hourly or weekly basis. The grievor, a train messenger, is one of a small number of employees employed on train service positions and paid on a mileage basis.

It is the union's submission that the grievor is entitled to be paid on the basis of the mileage he would actually have worked had he not been on bereavement leave. Mr. Steadman operates as a train messenger between Capreol and Armstrong, and the mileage for a round trip between these two stations is 1080 miles. It is not disputed that in the circumstances of this case, Mr. Steadman, had he not been on bereavement leave on the above dates, would have been entitled to payment for 1080 miles.

The Company contends that in arriving at a working day for bereavement leave purposes consideration should be given to other articles of the collective agreement. These provisions show, it is urged, that eight hours constitute a day and that employees in passenger service are to be paid at the rate of twenty miles per hour when they are entitled to payment for time not worked. Thus, by article 27.4 (a), train service employees receive holiday pay on this basis:

27.4 (a) A train service employee who qualifies as provided in Article 8.4 will receive pay for each of the holidays specified in Article 8.1 for eight (8) hours or the number of miles which constitute a day's work. Such pay will be separate and apart from the monthly guarantee and from hours or miles earned during the month in which the holiday occurs.

Other provisions of article 27 indicate that in matters of detention time, preparatory time and train delays, train service employees are paid for time not worked on the basis of twenty miles per hour. It must be noted, however, that the provision for holiday pay is "separate and apart from the monthly guarantee and from hours or miles earned during the month in which the holiday occurs". Further, it is generally the case that detention and other allowances are an addition to pay which will usually (though not always) be earned in any case.

The matter of the payment to be made in cases of bereavement leave is explicitly dealt with in a collective agreement between the company and the Brotherhood of Railroad Trainmen. The particular bargain made by other parties, of course, is not binding on the parties to this case. My task is to interpret the collective agreement which these parties have made. In this case the collective agreement provides merely for leave of absence "with pay" the agreement with the Brotherhood of Railroad Trainmen provides for "one minimum day's pay" (which is later defined), for each day of bereavement leave.

Under the agreement in effect here, hourly or weekly paid workers would receive eight hours' pay for each day of bereavement leave, eight hours constituting a regular day's work. Employees engaged in passenger service work should be in no worse position. This is, however, the result of the interpretation applied by the Company in this case.

The grievor's regular earnings have been substantially reduced as a result of his taking the bereavement leave to which he was entitled. This was not the purpose of the provision for bereavement leave.

In cases of train service employees, then, it is my view that the pay to which they are entitled while on bereavement leave is to be calculated by reference to the actual mileage they would have worked on the days in question. Accordingly, the grievance must be allowed. The grievor is entitled to the difference between the payment he would have received for 1080 miles and the amount he actually received for the period in question.

(signed) J. F. W. WEATHERILL
ARBITRATOR