CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 143

Heard at Montreal, Tuesday, January 14th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Concerning the interpretation and application of article 2(e) of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

Stewart S. J. Stainton was out of the service and not subject to wages from September 9th to 25th inclusive, 1968, a period of 17 days. For the purpose of calculating overtime he claimed a reduction in the hours in the averaging period from 520 to 440, a reduction of 80 hours. The Company reduced the hours in Steward Stainton's averaging period from 520 to 480, a reduction of 40 hours.

The Brotherhood alleges that the Company, in declining the claims for a reduction in the hours in the averaging period from 520 to 440, or 80 hours, has violated the provisions of Article 2, Clause (e), of the Collective Agreement which reads:

> ARTICLE 2 – WORKING HOURS:
>
> (e) The hours referred to in Clause (d) will, for the purpose of calculating overtime, be reduced by 42 hours effective December 1, 1967 and 40 hours effective June 1, 1968 for each calendar week an employee is out of the service and not subject to wages for any reason other than regular layover.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. R. BROWNE	**(SGD.) T. P. JAMES**
GENERAL CHAIRMAN	**MANAGER, S.D. & P.C. & N.S. DEPT.**

There appeared on behalf of the Company:

T. P. James	– Manager, S.D., P.C. & News Dept., Montreal
J. W. Moffatt	– General Supt., S.D., P.C. & News Dept., Montreal

And on behalf of the Brotherhood:

J. R. Browne	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

As appears from the joint statement of issue, the grievor was out of service and not subject to wages from September 9, 1968, to September 25. In this period of 17 days, there was, according to company's interpretation, only one "calendar week". The period in question began on Monday, September 9 and continued until Wednesday, September 25. If by "calendar week" the collective agreement refers to the 7–day period commencing on a Sunday, then there was only one complete calendar week within the 17 day period: that is, the week commencing on Sunday, September 15. If, however, as the union argues "calendar week" refers to a period of seven consecutive days, then plainly the period in question contains two calendar weeks. It is a question of which interpretation of article 2(e), set out above, is correct.

There is no doubt that in general the phrase "calendar week" means a seven-day period commencing on a Sunday. The collective agreement must be interpreted so as to give effect to the plain meaning of its provisions unless some special meaning of the terms used is proved, or unless, on accepted principles of interpretation, the context in which the words are used requires some other meaning. It is the union's contention in this case that a consistent interpretation of the collective agreement requires that "calendar week" as it is used in article 2(e) must mean a period of seven consecutive calendar days.

The parties are agreed that article 2(e) was negotiated having regard to the provisions of the **Canada Labour Code**. The **Code** establishes the principle of an 8-hour day and 40-hour week for employees under its provisions (although the application of the **Code** to employees affected by this case has been deferred). It is recognized in the **Code** that in some situations, application of the 8-hour day, 40-hour week provisions is not practical. The grievor, a dining car steward, is an example of the sort of employee, working irregular hours, for whom the regular **Code** provisions were not apposite. The **Code** provides in such circumstances that the principle of the 8-hour day, 40-hour week, could be set by a procedure of averaging hours over a period of time. Having regard to the provisions of the **Code**, the parties have provided for such a procedure in this agreement. Thus, article 2(d) of the collective agreement provides as follows:

> **(d)** Time worked in excess of 576 straight time hours, effective June 1, 1967; 546 straight time hours effective December 1, 1967, and 520 straight time hours effective June 1, 1968, in a Quarter, will be paid for at one and one-half times the basic hourly rate on the first payroll following the end of the Quarter.
>
> Example
> (Based on Hours in effect June 1, 1967)
>
> | | Hours Worked | Hours Paid |
> |---|---|---|
> | June, 1967 | 186 | 192 In two parts |
> | July, 1967 | 204 | 192 In two parts |
> | August, 1967 | 197 | 192 In two parts |
> | Total | 587 | 576 |
>
> Adjustment - 11 hours
>
> Paid September - (A) period - 11 x 1-1/2 = 16-1/2 hours.

Currently, the parties calculate overtime on the basis of a 13-week averaging period. Overtime rates are now paid for hours worked in excess of 520 during the averaging period. The **Canada Labour Code** provides that time and one-half be paid for hours worked in excess of the straight time hour permitted, and that figure is obtained by multiplying the number of weeks in the averaging period of 40. The limit of 520 straight time hours within an averaging period of 13 weeks, as agreed to by the parties, is thus consistent with the **Code**. Clearly, it would be unfair to include time not worked in the averaging period, and the **Code** makes provision for this in Part II, section 4(b) IV:

> For any week in the averaging period in which an employee within the class is not entitled to wages, the number of hours specified in Rule I and Rule II shall be reduced by 40.

The parties have adopted a similar provision in article 2(e) of the collective agreement, set out above. This provision differs from that in the **Labour Code** in two significant respects: **(1)** it limits the reduction of the averaging

period to those cases where an employee "is out of the service and not subject to wages for any reason other than regular layover"; **(2)** it provides for the reduction to be made "for each calendar week" in which the employee is out of service. Only the second difference is material hero.

Neither in the **Labour Code** nor in the collective agreement does it appear that the averaging period is to be composed of "calendar" weeks, nor does it appear that the parties have made reference to such periods in determining the overtime rates to be paid. As long as the averaging period consists of 13 complete weeks, however, it would seem to be immaterial, from the point of view of compliance with the **Code**, whether these are calendar weeks or not.

The provision in article 2(e) of the collective agreement that the maximum straight time hours to be worked in an averaging period is to be reduced only for any "calendar" week in which the employee is not subject to wages is surprising, and quite plainly leads (if it is to be read as the company suggests), to capricious and inequitable results. Thus, in the instant case the grievor was out of service for a period in excess of two weeks, and encompassing the best part of three calendar weeks. However, since the 17-day period happened to contain only one complete calendar week, his maximum straight time hours for the averaging period was reduced by only 40 hours. It may be observed that even if the union's contention in this case is correct, and the hours should have been reduced by 80, the grievor has still been adversely affected by his absence, since there is no reduction in respect of the remaining three days.

The company argues that the reference in article 2(e) to a calendar week makes the collective agreement consistent with the **Labour Code**. In the above-quoted provision of the **Code**, of course, the reference is to "week", and not to "calendar week". The company, however, relies on the definition of "week" set out in the **Code**, as follows:

> 'Week' means, in relation to Part I, the period between midnight on Saturday and midnight on the immediately following Saturday.

This is, of course, the definition of a calendar week. In part of the **Code**, therefore, where the term "week" is used, it would properly be read as "calendar week". The difficulty with the company's argument is that the material provision of the **Code** set out above (Part 11, section 4(b) IV), appears in Part II of the **Code**, not Part I. No doubt the provisions of Part I of the **Code** are such that the reading of "week" as "calendar week" is apposite. It does not follow that "week" should mean "calendar week" in Part II of the **Code**, particularly where the definition has been expressly restricted to Part I and where the results of such a definition would be, as in this case, patently equitable.

Having regard to the material provisions of the **Labour Code** and to their obvious purpose, and considering that it was the intention of the parties to make provisions consistent with those of the **Code** and giving effect to the same purpose, I can only conclude that the intent and meaning of article 2(e) of the collective agreement, as of Part II, section 4(b) IV of the **Labour Code**, is that the maximum straight time hours in an averaging period will be reduced by 40 for each 7-day period the employee is out of service.

For the foregoing reasons it is my award that for the purpose of calculating overtime the grievor's hours in the averaging period in question ought to have been reduced from 520 to 440. The grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR