

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 171

Heard at Montreal, Tuesday, September 9th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Concerning the interpretation and application of Article 2, Clause (e) of the Collective Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Steward W. Basil, Vancouver District, was out of the service and not subject to wages September 15th to October 2nd inclusive, a period of seventeen (17) days.

There was a reduction of only 40 hours made in the 520 hour straight time averaging period.

The Union contends the Company was in violation of Article 2, Clause (e) of the Collective Agreement in not reducing the straight time averaging period by 80 hours.

FOR THE EMPLOYEES

(SGD.) J. R. BROWNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. S. Bistrisky – Assistant Solicitor, Law Department, Montreal
J. W. Moffatt – General Superintendent, Passenger Operations, Montreal
R. Colosimo – Manager, Labour Relations, Montreal

And on behalf of the employees:

J. R. Browne – General Chairman, Montreal

AWARD OF THE ARBITRATOR

It is agreed that Steward Basil was out of service and not subject to wages from September 15, 1968, to October 2, 1968, inclusive. He seeks the deduction of 80 hours from the 520 hours used as a basis for overtime calculations with respect to the 13-week averaging period referred to in Article 2(b) of the collective agreement.

Article 2(b) establishes a set of 13-week averaging periods, the first of which commenced on January 1, 1968. Steward Basil, on the above facts was out of service during part of the third averaging period of 1968, which expired on September 29, and part of the fourth period, which commenced on September 30. There can be no doubt under the terms of the collective agreement that each of the averaging periods is to be considered as a distinct period of time, with a fixed date of commencement and termination. Therefore, the days after September 29 on which Steward Basil was out of service are to be considered only with respect to the fourth averaging period, and may not be lumped together with days out of service during the third averaging period.

By Article 2(e) the 520 hours referred to in Article 2(b) are to be reduced by 40 for each calendar week an employee is out of service and not subject to wages for any reason other than regular layover. It is clear that, whatever the definition of "calendar week" (a matter dealt with in **Case No. 172**) Steward Basil could derive no benefit under the material provisions of the agreement in respect of his time out of service from September 30 to October 2, inclusive. This time occurred within the fourth averaging period, and does not constitute a week on any definition.

As to the period from September 15 to September 29, it is agreed that in fact Steward Basil was out of service by reason of regular layover from September 15 to September 17, inclusive. On his last trip prior to the material times he had arrived at his home terminal on September 14, and his assignment called for three days' layover following each round trip. Article 2(e) of the collective agreement sets out that the deduction of 40 hours per calendar week is to be made in respect of time when an employee "is out of the service and not subject to wages for any reason other than regular layover". Since for the period September 15 to September 17 Steward Basil was on regular layover this time cannot be counted in determining the time to be deducted for that averaging period. Thus, for the third averaging period of 1968, Steward Basil was entitled only to a deduction determined by reference to the period September 18 to September 29, inclusive: a period of 12 days. Again, on any definition, it is clear that this period contains but one calendar week. Steward Basil was therefore entitled only to a deduction of 40 hours (which was made), and not to a deduction of 80 hours during that averaging period.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR