CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 172

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:

Waiter A. Dueck, Winnipeg District, was out of the service and not subject to wages August 5th to 12th inclusive, a period of eight (8) days. He was again out of service and not subject to wages September 10th to 18th inclusive, a period of nine (9) days.

The 520 hour straight time averaging period was not reduced.

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 eighty (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 not disputed that Waiter Dueck was out of the service and not subject to wages for 8 consecutive days from August 5, 1968, to August 12, 1968, inclusive, and for 9 consecutive days from September 10, 1968, to September 18, 1968, inclusive. Each of these periods occurred during the third 13-week averaging period of 1968, established pursuant to Article 2 of the collective agreement. The grievor seeks a deduction of 40 hours, in respect of each of the above periods, from the 520 hours established for the calculation of overtime during the averaging period.

Article 2 (e) of the collective agreement is as follows:

> **Article 2 – Working Hours:**
> **(2)** 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.

It is not suggested that on any of the days in question the grievor was out of service by reason of regular layover. The only question to be determined, therefore, is whether in fact the grievor was out of service for a "calendar week" in each of the above periods.

The first period for which a 40-hour deduction is sought ran from Monday, August 5 to Monday, August 12. The second period ran from Tuesday September 10 to Wednesday, September 18. There is no doubt that in general the phrase "calendar week" means a seven-day period commencing on a Sunday. In **Case No. 143**, however, I came to the conclusion that the phrase "calendar week" as used in this collective agreement, meant a period of seven consecutive days. That conclusion was erroneous.

The parties are agreed, as was set out in **Case No 143**, that Article 2(e) was negotiated having regard to the provisions of the **Canada Labour Code**. The Code provides in certain circumstances that the principle of an 8-hour day, 40-hour week may be met by a procedure of averaging hours over a period of time. Authorization for such a procedure may be found in Section 5 (2) of the Code, where it is permitted in such manner and in such circumstance as may be prescribed by the regulations. In the regulations issued under the Code, being S.O.R. 65-256, it is provided by Rule IV of Section 4 (under the general heading "Hours of Work") as follows:

> **IV** For any week in the averaging period in which an employee … is not entitled to wages, the number of hours specified … shall be reduced by 40

The term "week" is not separately defined in the Regulations, but it is defined in the Code, in Section 2(O) as follows:

> **(O)** "week" means in relation to Part I, the period between midnight on Saturday and midnight on the immediately following Saturday.

Section 5 of the Code, above referred to, occurs in Part I of the Code, which has the title "Hours of Work". Rule IV of Section 4 of the Regulations is made pursuant to Section 5 of the Code, and the word "week" as it is used in Rule IV must mean a week as defined in Section 2(O) of the Code. The reference is clearly to a "calendar week", as the phrase is generally used.

On the material put before me in **Case No. 143** it appeared that the provision in Rule IV of section 4 of the Regulations was actually set out in "Part II, section 4(b) IV" of the Code. This of course was inaccurate, as a study of the whole of the Code and Regulations shows. In **Case No. 143**, it was reasoned that the definition of "week" set out in the Code should be restricted to cases coming under Part I of the Code. That reasoning was correct, but it was wrongly considered that in fact the provisions set out in Rule IV came under Part II of the Code The fact is, as I have noted, that Rule IV is made pursuant to Part I, and the conclusion is unavoidable that "week" as it is used in Rule IV, must mean "calendar week", or more precisely the period between midnight on Saturday and midnight on the immediately following Saturday. Since the parties sought to comply generally with the provisions of the Code, and since they have expressly used the term "calendar week" in Article 2(e) of the collective agreement, it must be concluded that that phrase is to be given its normal meaning, which is the same as its meaning under the Code.

It must accordingly be my conclusion that the decision in **Case No. 143** was wrong and ought not to be followed On the facts of the instant case, Waiter Dueck was not out of service for a "calendar week" on either of the above occasions. His case therefore does not come within Article 2(e) of the agreement, and he is not entitled to the deductions sought.

For the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR