

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 210

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

### **DISPUTE:**

Claim for 172 miles submitted by Engineer R.V. McCollum of Toronto for General Holiday compensation on August 4, 1969, Civic Holiday.

### **JOINT STATEMENT OF ISSUE:**

Engineer R.V. McCollum, due to an injury, commenced sick leave on January 22, 1969. For service performed during 1968, he was entitled to 26 days vacation with pay in 1969. He requested and was granted vacation pay while on sick leave and was shown as on vacation for payroll purposes from July 23 to August 17, 1969. His record indicates continued sick leave subsequent to the recorded vacation.

August 4, 1969 was the Civic Holiday in Ontario. In accordance with Article 112 of the Collective Agreement, Mr. McCollum submitted a general holiday claim for 172 miles.

The Company declined payment of this ticket.

### **FOR THE EMPLOYEES:**

**(SGD.) E. J. DAVIES**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) K. L. CRUMP**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

M. A. Cocquyt	– System Labour Relations Officer, Montreal
C. F. Wilson	– Labour Relations Assistant, Montreal
W. S. Mason	– Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

E. J. Davies	– General Chairman, St. Thomas, Ont.
A. Miller	– Local Chairman, Montreal
D. E. McAvoy	– General Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

Entitlement to holiday pay is fully set out in Article 112 of the collective agreement. In Ontario, Civic Holiday is a general holiday with respect to which the grievor would, if qualified, be entitled to a holiday with pay. The material provisions of the collective agreement under which the grievor might qualify for holiday pay are set out in Article 112.3, and are as follows:

**112.3** An employee who does not commence a shift or tour of duty between 0001 hours and 2359 hours on a general holiday and who has completed 30 days of continuous employee relationship shall qualify for a holiday with pay providing:

- (a) he is available for duty on the holiday and entitled to wages for at least 15 shifts or tours of duty during 30 calendar days immediately preceding the general holiday, or
- (b) he is available for duty on the general holiday and he is available for duty or commences a shift or tour of duty on the day before and the day after the general holiday.
- (c) a vacation day on pay shall be considered as a qualifying day under this paragraph.

The grievor, of course, did not commence a shift or tour of duty at the time referred to, and he had completed 30 days of continuous employee relationship. He was not, however, available for duty on the holiday, nor was he entitled to wages for any shifts or tours of duty during the 30 calendar days immediately preceding the general holiday. Thus, he did not meet the requirements of Article 112.3(a). Article 112.3(b), however, is an alternative to Article 112.3(a). In considering the grievor's possible entitlement to holiday pay under Article 112.3(b), it is to be borne in mind that a vacation day of pay is to be considered as a qualifying day. Article 112.3(c). The grievor was on paid vacation at the material times, as set out in the joint statement of issue. Thus, the fact that he was on vacation would not require the conclusion that he was not available for duty on the qualifying days. It is, in essence, the Company's contention that the grievor was not in fact available for duty because of his illness, and that he would not have been at work in any event, quite apart from the fact that he was then considered to be on vacation.

In my view, Article 112.3(c) operates so as to ensure that an employee's entitlement to holiday pay is not lost by reason only of his being on vacation. It does not operate so as to obviate the need for employees who are on vacation to meet the requirements of Article 112.3 in other respects. In the instant case, it must be concluded that the grievor was not entitled to holiday pay. This conclusion is not based on the fact that the grievor was on vacation at the time (Article 112.3(c) prevents that), but rather on the fact that the grievor was not available for work in any event because of illness.

The Union bases its claim on Article 112.6 of the collective agreement, which is as follows:

**112.6** A qualified employee whose vacation period coincides with any of the general holidays specified in Paragraph 112.1 shall be paid the amount specified in Sub-paragraph 112.8(b).

It is a requirement of that article that the employee claiming holiday pay be qualified therefor, and this means that he must be qualified under Article 112.2 or 112.3. For the reasons set out above, the grievor was not so qualified, and accordingly is not entitled to payment under Article 112.6. Clearly, that article is intended to ensure that employees do not lose the advantage of a holiday by reason of their being on vacation. On the facts of this case, the grievor did not lose a holiday for this reason. Article 112.6 does not apply in the grievor's case, because he was not qualified for holiday pay under the relevant provisions of the agreement.

For the foregoing reasons, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**