CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 213

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of L. Levasseur for general holiday pay on St. Jean Baptiste Day, June 24, 1969, a general holiday.

JOINT STATEMENT OF ISSUE:

On April 18, 1969, L. Levasseur sustained an injury while on duty which prevented him from working until he resumed duty on June 23, 1969. During the period of incapacity, i.e., April 18, 1969 until June 22, 1969, he received workmen's compensation payments. He was available for duty on the St. Jean Baptiste Day general holiday, June 24, 1969 but his services were not required.

The Brotherhood contends that Levasseur is entitled to holiday pay for the June 24th general holiday under Article V, Section 2 of the Master Agreement dated January 29, 1969.

The Company contends that Levasseur is not entitled to holiday pay for the June 24th general holiday under such Section 2 in that he did not meet the qualification requirement under Clause (c) of that Section.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. D. ROBERTSON	(SGD.) E. L. GUERTIN
SYSTEM FEDERATION GENERAL CHAIRMAN	REGIONAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

C. E. Moore	– Supervisor Labour Relations, Montreal
J. B. Chabot	– Assistant Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

G. D. Robertson	– System Federation General Chairman, Ottawa
W. M. Thompson	– Vice President, Ottawa
A. Passaretti	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

Entitlement to holiday pay is fully set out in Article V of the Master Agreement. In Quebec, St. Jean Baptiste Day is a general holiday for employees who qualify under section 2 of Article V. The material provisions of section 2, which govern the grievor's entitlement in the instant case, are as follows:

> **2.** In order to qualify for pay for any one of the holidays specified in Section 1 of this Article, an employee
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> **(a)** must have been in the service of the Company and available for duty for at least 30 calendar days,
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> **(b)** must be available for duty on such holiday if it occurs on one of his work days excluding vacation days, if notified prior to completion of his last shift or tour of duty preceding such holiday that his services will be required (this Clause (b) does not apply in respect of an employee who is laid off or suffering from a bona fide injury):
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> **(c)** must be entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday except that in respect of regularly assigned sleeping, dining and parlour car service employees the number of shifts or tours of duty worked during the 30-calendar-day period shall, for the purpose of this Clause (c), be the number of hours on duty during that period exclusive of overtime divided by eight. This Clause (c) does not apply to an employee who is required to work on the holiday.

In the instant case the grievor had been in the service of the Company for at least 30 calendar days at the time of the holiday, and while there might be some question whether he was "available for duty" during that time, the Company has acknowledged that the grievor was not disqualified under section 2(a). It is also acknowledged that he is not disqualified under section 2(b), and the grievor was available for duty on the holiday. It is the Company's contention, however, that the grievor did not meet the requirements of section 2(c) in that he was not entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday. The grievor was absent from work from April 18, 1969, until June 22, 1969. He returned to work on June 23, and was entitled to wages for that day. He received workmen's compensation payments in respect of lost time throughout the rest of the period in question. The issue in this case is, essentially, whether entitlement to workmen's compensation payments constitutes an entitlement to wages within the meaning of Article V 2(c).

In my view, the nature of the payments to which the grievor was entitled as workmen's compensation is not affected by the fact that these payments may be charged in full against the employer. They may be treated, for purposes of this case, as direct payments from the employer to the employee. They are not, however, "wages" within the meaning of Article V 2(c). It may be that in some cases an employee may be paid wages or the equivalent of wages even though he does not in fact perform work. The case where an employee receives a guaranteed payment where he is called in to work for a short time may be an example, although it is not necessary to decide that matter here. In general, however, wages are related to attendance at work, and the reference to a number of "shifts" or "tours of duty" confirms that this is the meaning of the term as it is used in Article V 2(c).

In the circumstances of this case, the grievor was "entitled to wages" for only 1 shift during the 30 calendar days immediately preceding the general holiday; accordingly he did not meet the requirements of Article V 2(c), and did not qualify for holiday pay for St. Jean Baptiste Day, 1969.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR