CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 222

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claims of eight Passenger Trainmen, Winnipeg, for 300 miles reduced from their monthly guarantee claims for the month of December, 1969 account General Holiday pay being used to make up the monthly guarantees.

JOINT STATEMENT OF ISSUE:

Conductors C.H. Harvey and F.J. McEachern., Baggageman J.P. McLeary and A.L. Parkinson; Brakemen R.M. Long, C.W. Taylor, J.F. Tennent and F.G. Wise submitted claims for 414, 414, 335, 322, 422, 311, 308 and 422 miles for the month of December 1969, respectively, the number of miles they were short of the monthly guarantee of 4,598 miles for Conductors, 4,545 miles for Baggagemen and 4,545 miles for Brakemen in that month. Two General Holidays occurred in the month of December and they were paid an amount equivalent to 150 miles for each holiday. Such General Holiday payments were applied again the monthly guarantee.

The Union contends that the Company, in using a General Holiday payment to make up a monthly guarantee, has violated the provisions of Article 3, Clause (c), which reads:

> (c) Mileage made by regularly assigned passenger crews other than their regular trips on their assigned runs will not be used to make up their monthly guarantee. Overtime, switching, initial and final terminal time will not be used to make up the monthly guarantee.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. T. O'BRIEN	**(SGD.) W. J. PRESLEY**
GENERAL CHAIRMAN	**REGIONAL MANAGER, PRAIRIE REGION**

There appeared on behalf of the Company:

P. A. Maltby	– Supervisor Labour Relations, Winnipeg

And on behalf of the Brotherhood:

R. T. O'Brien	– General Chairman, Calgary
P. P. Burke	– Vice Chairman, Calgary
C. McCaw	– Local Chairman, Winnipeg

AWARD OF THE ARBITRATOR

By article 3(a) of the collective agreement regularly assigned passenger trainmen are entitled, subject to certain qualifications, to receive not less than the monthly guarantee set out in article 1 of the agreement, and referred to in the joint statement of issue. Article 3(b) provides for the prorating of the guarantee in certain cases, and is not material here. Article 3(c), set out above, provides for certain cases in which mileage, or time, is not used to make up the guarantee. In the instant case, holiday pay was used to make up the guarantee, and the question is whether that was proper.

Article 1(a)(3), which sets out the general entitlement of the employees, provides that a minimum amount per month (varying with the employees' classifications) "will be paid regularly assigned passenger trainmen, exclusive of overtime, switching and initial and final terminal time". Holiday pay is not one of the excluded heads of payment. On the basis of this provision, it would seem that holiday pay, as well as the premium payments to which an employee who works on a holiday is entitled, would be included in determining whether an employee was paid the minimum amount. In this respect the following remarks made in **Case No. 170** appear to be apposite:

> In the absence of some express provision in the agreement, it is my view that holiday pay would naturally be included in the total of an employee's earnings, and that any payment necessary to bring him up to the guaranteed level would be determined having regard to this total. Clearly, every employee entitled to holiday pay gets the benefit of this credit, just as does every employee who actually works.

There is no express provision in this collective agreement by which payments in respect of holiday pay are to be excluded from the determination of the amount payable to make up the monthly guarantee. Some difficulty arises, however, with respect to the effect of the first sentence of article 3(c), set out above. The second sentence of that article, of course, repeats what is provided in article 1(a)(3), namely that overtime, switching and initial and final terminal time are excluded from the calculation of the minimum amount payable. The first sentence of article 5(c), however, provides that "Mileage made by regularly assigned passenger crews other than their regular trips on their assigned runs will not be used to make up their monthly guarantee". This, in my view, is a reference to mileage made by regularly assigned passenger crews on extra or special trips, extra mileage outside of assigned runs, extra mileage on detours, and the like. Matters relating to the operation of extra mileage are set out in article 4, and it is expressly provided in article 4(c) (although it is already clear from article 3(c)), that extra mileage is not to count against the monthly guarantee. The "extra mileage" referred to is dealt with in detail in article 4, and could not be considered to include the matters of payments such as holiday pay. If the effect of the first sentence of article 3(c) were to restrict the guarantee to precisely those miles of regular trips on assigned runs, then it would not have been necessary to specify other sorts of payments as exclusions. The sentence is itself not in the form of a general overriding provision but of a specific exclusion, and that, in my view, is its effect. It may finally be observed that there is no provision excluding holiday pay from the determination of the guarantee.

In **Case No. 84** the company had applied holiday payments toward the monthly guarantee, and the grievors there, as here, relied on article 3(c) in support of their claim that this was improper. In the result, the claim was allowed. It is clear from the reasoning of the award in that case that the arbitrator took the same view of article 3(c) as that which has been set out above: it spells out those payments which will not apply to make up the monthly guarantee. It contains no reference to holiday pay. Had the parties wished to exclude holiday pay from the monthly guarantee, they could have negotiated such a provision.

It follows that holiday pay is not excluded from calculation of the guarantee, and that there has been no violation of the provisions of the collective agreement by the company in this case. The award in **Case No. 84** appears, with respect, to have been a lapse; it is, of course, the reasoning of the matter which is of concern in subsequent cases, and I agree with the reasoning in **Case No. 84**.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR