

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 226

Heard at Montreal, Tuesday, July 14, 1970

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION (T)**

### DISPUTE:

Claim of Conductor G.A. Forsythe, B.C. Area, November 11, 1967.

### JOINT STATEMENT OF ISSUE:

On November 7, 1967 Conductor G.A. Forsythe was in Work Train Service, working between McBride and Mile 47, Fraser Subdivision. For this tour of duty, Conductor Forsythe claimed and was paid from 0500 hours to 2140 hours 16 hours and 40 minutes, which yielded an amount of 260 miles at the work train rate of pay.

Since this was Conductor Forsythe's last tour of duty prior to the general holiday, Remembrance Day, November 11, 1967, he submitted time return claiming the 16 hours and 40 minutes, or 260 miles, as general holiday pay. The Company paid eight hours, or 100 miles, at work train rate of pay. Subsequently, the employee submitted a grievance for payment of 160 miles, being the difference between the pay claimed and the pay allowed, which grievance was declined by the Company. The Union contends that in refusing to pay the 160 miles, the Company violated Article 5, Rule 62-A, Section 5 (1) of Agreement 4.17.

Similar claims varying in amounts from 531 1/2 miles to 635 1/2 miles each, were submitted by 3 Conductors and 4 Trainmen for general holiday pay for Thanksgiving Day, October 14, 1968.

### **FOR THE EMPLOYEES:**

**(SGD.) J. S. CORBETT**  
GENERAL CHAIRMAN

### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

A. J. DelTorto	– System Labour Relations Officer, Montreal
J. R. Gilman	– Labour Relations Assistant, Montreal
R. B. Ferrier	– Superintendent Transportation, Saskatoon

And on behalf of the Brotherhood:

J. S. Corbett	– General Chairman, Winnipeg
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**AWARD OF THE ARBITRATOR**

The question in this case relates to the amount of holiday pay to which the grievor was entitled. The grievor claims an amount equal to the amount which he was paid in respect of his last tour of duty prior to the holiday, that is, the equivalent of 16 hours and 40 minutes' pay. The Company paid him 8 hours, or 100 miles, at the applicable rate.

The governing provision of the collective agreement is as follows:

**RULE 62-A, SECTION 5 (1).**

An employee qualified under Section 2 hereof and who is not required to work on a general holiday shall be paid in accordance with the following:

A Conductor, Baggage man or Brakeman shall be paid an amount equal to his earnings, exclusive of overtime, for the last tour of duty he worked prior to the general holiday, provided that in the case of an employee paid at passenger rates, if such amount is less than the equivalent of 150 miles at the rate applicable to passenger service, the equivalent of 150 miles shall be paid.

The grievor was entitled to be paid "an amount equal to his earnings, exclusive of overtime", and he was entitled to be paid at work train rates. His earnings for the last tour of duty prior to the holiday were the equivalent of 260 miles. The question is, what were his earnings "exclusive of overtime"?

Article 4(a) of the collective agreement provides, with respect to work train and certain other service that eight hours or less, one hundred miles or less will constitute a day's work, "overtime pro rata". From this it would appear that earnings in excess of eight hours or 100 miles would constitute "overtime". The rate at which overtime is paid is another matter, and does not affect its nature as overtime.

In **Case No. 38**, the Arbitrator dealt with a similar contention and dismissed the grievance which sought inclusion of pro rata overtime beyond the basic day for the purpose of holiday pay. The same reasoning is applicable in this case. Earnings beyond the basic day are described in the collective agreement as "overtime", and these are expressly excluded from the amount to which the grievor is entitled as holiday pay under the collective agreement.

For the foregoing reasons the grievance must be dismissed.

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