CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 342

Heard at Montreal, Tuesday, March 14, 1972

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Concerning interpretation of calculation of Vacation Pay in Article VIII of the Collective Agreement between UTU and QNS&L Railway.

JOINT STATEMENT OF ISSUE:

Claimant R. Gagnon, Crew Clerk through Job bidding accepted to work the 16:00 to 24:00 hrs. shift which carries a 0.10 per hour premium. Claimant's normal work week would be from Sunday to Thursday.

Employee's 1971 annual vacation was paid at the regular or basic rate excluding the 0.10 premium. The UTU maintains that for the purpose of vacation pay, regular rate consists of basic rate, shift premiums, plus premium rate for work scheduled on Sunday. The Railway maintains that such vacation pay should be calculated on the regular rate only in accordance with the Collective Agreement.

The UTU filed a grievance. The Railway rejected the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. J. SIROIS	(SGD.) P. L. MORIN
GENERAL CHAIRMAN	SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	– Counsel
P. L. Morin	– Superintendent, Labour Relations, Sept Îles
R. C. Martin	– Superintendent, Employee Compensation,
F. LeBlanc	– Labour Relations Assistant
R. Deschênes	– Chief Crew Dispatcher, Transportation,

And on behalf of the Union:

J. J. Sirois	– General Chairman, Sept Îles
G. W. McDevitt	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The collective agreement provides for vacations in Article 8. By Article 8.02, employees must have one year's continuous service with the Railway to qualify for vacation with pay. Employees who terminate their employment before achieving one year's service are paid a percentage of "total earnings" in lieu of paid vacation. After one year's service, however, employees are to be allowed vacation with pay varying with the length of service and with the time worked each year, in accordance with a schedule set out. The grievor was entitled to vacation with pay in accordance with the schedule. There is no question in this case as to any variation of the period of the grievor's vacation. The issue is simply as to the calculation of vacation pay.

Article 8.08 provides as follows:

> **8.08** Employees on vacation shall receive pay equal to the regular pay they would have received had they been working.

It is the Union's contention that, had the grievor been working he would have received a payment including shift premiums and Sunday premiums. These are provided for in Articles 6.01 and 4.05 respectively.

> **6.01** A shift premium of fifteen (15) cents per hour will be paid for hours worked on the night shift and ten (10) cents per hour for hours worked on the afternoon shift.
>
> **4.05** Work scheduled and performed on Sunday will be paid for at the rate of time and one half. Work performed on Sunday in excess of eight (8) hours, or in excess of forty (40) straight time hours in the work week will be paid for at double time.

These are provisions for extra payment in respect of "hours worked" or for "work scheduled and performed" at certain times. During the period of his vacation the grievor did not work at such times. His vacation pay (which he was to receive when proceeding on vacation) was equivalent to the "regular pay" he would have received, had he been working. The use of the phrase "had he been working" does not, in my view, require the Company to estimate the particular times when an employee going on vacation might be required to work if he were not going on vacation, so as to be able to calculate the shift and Sunday premiums to which he would notionally be entitled. This process, it may be noted, would result in employees with equal seniority and in the same classification receiving variable amounts of vacation pay, an anomaly for which no justification appears. The use of the phrase "had he been working" serves rather, in my view, to identify the scale according to which an employee's vacation pay is to be calculated. It is the "regular pay" according to such scale that an employee is to receive as vacation pay, and in my view this does not include premium payments made by way of special compensation for work performed at certain times. Accordingly, the grievor's vacation pay was correctly calculated without regard to what might have been the premiums payable under Articles 6.01 or 4.05.

For these reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR