CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 378

Heard at Montreal, Wednesday, October 11, 1972

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

The Union claims the Company violated Article 8.5.2 of the Agreement.

JOINT STATEMENT OF ISSUE:

Several employees at Winnipeg, Manitoba, were required to Work eight hours on Christmas Day, Boxing Day, 1970, and New Years' Day 1971.

The Union contends the employees having qualified as per Article 8.2 of the Agreement must be paid as per Article 8.5.1 of the Agreement and in addition be paid for the General Holiday as per Article 8.5.2 of the Agreement.

The Company contends the employees involved were properly paid in accordance with Article 8.5.2(b) of the Agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) C. C. BAKER
GENERAL CHAIRMAN	DIRECTOR LABOUR RELATIONS AND SAFETY

There appeared on behalf of the Company:

C. C. Baker – Director, Labour Relations & Safety, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto
G. Moore – Vice-General Chairman, Toronto
F. C. Sowery – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 8.5.1 of the collective agreement provides as follows:

> **8.5.1** **(a)** An assigned employee qualified under Section 8.2 of this Article and who is not required to work on a general holiday shall be paid eight hours' pay at the straight time rate of his regular assignment.
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> **(b)** An unassigned or spare employee qualified under Section 8.2 of this Article and who is not required to work on a general holiday shall be paid eight hours' pay at the straight-time rate applicable to the position in which such employees worked his last tour of duty prior to the general holiday.

Although the employees referred to in the grievance were qualified under Article 8.2, they were of course required to work on the general holidays in question. They do not therefore come within the scope of Article 8.5.1, which deals with payment to employees "not required to work on a general holiday". It is clear that Article 8.5.1 simply has no application in these circumstances.

Article 8.5.2 of the collective agreement is as follows.

> **8.5.2** An employee qualified under Section 8.2 of this Article and who is required to work on a general holiday shall, at the option of the Company:
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> **(a)** be paid, in addition to the pay provided in sub-section 8.5.1 hereof, at a rate equal to one and one-half times his regular rate of wages for the actual hours worked by him on that holiday with a minimum of two hours and 40 minutes for which two hours and 40 minutes service may be required but an employee called for a specific purpose shall not be required to perform routine work to make up such minimum time. When more than one shift is worked by an employee on a general holiday, the provision of this clause (a) shall apply to the first shift only, or
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> **(b)** be paid for work performed by him on the holiday in accordance with the provisions of the applicable collective agreement with a minimum of four hours at the pro rata rate for which the equivalent hours of service may be required but employees called for a specific purpose shall not be required to perform routine work to make up such minimum time and, in addition, shall be given a holiday with pay on the first calendar day on which the employee is not entitled to wages following the holiday; pay for such holiday shall be eight hours at the straight time rate of the position worked on the holiday.

The employees referred to in the grievance were qualified under Article 8.2, and were required to work on the general holidays referred to. Thus, Article 8.5.2 applies, and by its terms, the Company had the option of paying the employees concerned either under Article 8.5.2 (a) or under Article 8.5.2 (b). In the event that option (a) is chosen, then the payment to be made thereunder includes "the pay provided in sub-section 8.5.1". In the event that option (b) is chosen, then a holiday with pay is provided "on the first calendar day on which the employee is not entitled to wages following the holiday". In each case there are particular provisions as to payment for time worked, and in each case, it will be seen, a day's holiday pay is provided for.

In the instant case the employees referred to were paid pursuant to Article 8.5.2 (b). In the circumstances, the Company had the option set out in Article 8.5.2, and selected one of those, as it was entitled to do. As has been shown, Article 8.5.1 has no application in the circumstances. Since payment was made under Article 8.5.2 (b), and payment pursuant to that provision is not itself in dispute, it must be concluded that the collective agreement has been complied with.

It is the Union's contention that the employees were entitled not only to the payment pursuant to Article 8.5.2, but also to the payment provided for in Article 8.5.1. As has been shown, however, the collective agreement simply does not call for such a payment in the circumstances of this case, and Article 8.5.1 has no application here. Clearly, Article 8.5.1 applies to employees who are not required to work on the holiday, Whereas Article 8.5.2 applies to those, such as the employees concerned, who are required so to work.

It was contended for the Union that the collective agreement, in its holiday pay provision, does not comply with the requirements of **The Canada Labour (Standards) Code**. It is not clear to me, on the material before me that this is so, but in any event the question which I am to decide is one arising under the collective agreement made by the parties. It was not shown that I had any other source of jurisdiction. Accordingly, and having regard only to the provisions of the collective agreement, it must be my conclusion that the collective agreement has not been violated. The grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR