

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 490

Heard at Montreal, Tuesday, December 10th, 1974

Concerning

Canadian NATIONAL RAILWAY COMPANY

and

Canadian BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 13C(a) of Agreement 5.39 covering Telecommunications Department employees in the Northwest Region when in 1973 it substituted Gold Discovery Day (August 17 or the Friday immediately prior to August 17) for Civic Holiday (First Monday in August).

JOINT STATEMENT OF ISSUE:

In November of 1971 Civic Holiday was added to Agreement 5.39 and other Non-Operating Railway agreements for the Yukon Territory. Agreement 5.39 was reprinted to incorporate this change on April 21, 1972. In late July of 1972 the Company agreed to substitute Gold Discovery Day for Civic Holiday upon request of their Yukon employees since it was a holiday "more generally recognized" in the Yukon and since provision was made for such substitution in its various agreements. Since the question of substitution affected more than one collective agreement with more than one Non-Operating Union the Company advised Mr. R.C. Smith, the Chairman of the Non-Operating Employees Negotiation Committee, of the employee request and that Gold Discovery Day was a more generally recognized holiday in the Yukon than Civic Holiday and further that the Company was prepared to substitute the holidays as requested and gained his concurrence. The substitution took place in August 1972 without dispute.

In 1973 the Brotherhood grieved alleging that the Company violated Article 13C(a) in August of 1973 when it did not give holiday pay to employees in the Yukon for either Civic Holiday or for Gold Discovery Day, the latter of which occurred on a date when the employees were involved in a rotating national railway strike. The Brotherhood contended that the Yukon employees had not been canvassed in regard to substituting the Gold Discovery Day for Civic Holiday in 1973 as they had in 1972 and further that the Brotherhood had not agreed to such a substitution. The Brotherhood is seeking holiday pay for Civic Holiday, the first Monday in August, 1973. The Company denies that its actions were in violation of Article 13C(a) as alleged by the Brotherhood.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) g. h. bLOOMFIELD

NATIONAL Vice-President ASSISTANT Vice-President, LABOUR Relations

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal

W. S. Hodges – System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Henham – Regional Vice President, Vancouver

AWARD OF THE ARBITRATOR

This matter is governed by the provisions of Collective Agreement 5.39, and in particular by Article 13(C)(a) thereof, which is as follows:

GENERAL HOLIDAYS

Rule (a) An employee who qualifies in accordance with Section 1 or Section 2 of this Article shall be granted a holiday with pay on each of the following general holidays, including a general holiday falling on an employee's rest day.

New Year's Day Labour Day

Good Friday Thanksgiving Day

Victoria Day Remembrance Day

Dominion Day Christmas Day

Civic Holiday Boxing Day

If in any province or part thereof a holiday is more generally recognized than any one of the holidays specified above, the signatories hereto will substitute such holiday therefor in that province or part thereof. When any of the above holidays falls on Sunday or Saturday, the day observed by the Federal Government in respect of its employees as the holiday shall be recognized.

This provision was inserted in the collective agreement pursuant to a Master Agreement made between the Canadian Railways and the Associated Non-Operating Unions. This agreement, it seems clear, was binding on the trade union party (as well as the employer party) to the collective agreement before me in this case, namely, agreement 5.39. It would seem that the parties met their obligations under the Master Agreement when they incorporated the general holiday provision above set out into their own collective agreement.

In the summer of 1972, shortly before Civic Holiday would have been observed as a general holiday, officials of the Company were made aware (apparently by employees and some of their representatives), that in the Yukon Territory, Gold Discovery Day was a "more generally recognized" holiday than Civic Holiday. As there was little time to act, the Company sought and obtained the approval of the Chairman of the Non-Operating Employees Negotiating Committee (a committee consisting of representatives of several trade unions, which had agreed to the holiday provisions in the Master Agreement), to substitute Gold Discovery Day for Civic Holiday as a general holiday for employees in the Yukon Territory.

The Union in the present case contends that the approval of the Chairman of the Non-Operating Employees Negotiating Committee was unnecessary and ineffective in any matter involving the application of collective agreement 5.39. I agree. Collective Agreement 5.39 does not appear (in any provision to which I was referred) to confer any authority on any person other than a party to the agreement, with respect to its administration. Indeed, Article 13(C)(a) specifically refers to "the signatories hereto" as having certain obligations with respect to the substitution of one holiday for another. The parties to the collective agreement are Canadian National Railways Telecommunications Department, the Company, and the Canadian Brotherhood of Railway Transport and General Workers, the Union. The signing officer for the Union was R. Henham, Regional Vice-President.

Now by "signatory", the collective agreement, in Article 13(C)(a) refers, not to any particular individual but rather to the party itself, that is the Company or the Union, acting through its properly authorized officer. No doubt at all times material to this case the properly authorized officer of the Union continued to be Mr. Henham. It was on him, and not on the Chairman of the Non-Operating Employees Negotiating Committee, that the obligation created by Article 13(C)(a) fell.

While the consent to the substitution of one holiday for another which was given in 1972 by the Chairman of the Non-Operating Employees Negotiating Committee was ineffective as far as the administration of Collective Agreement 5.39 is concerned, it does not follow from that that this grievance must succeed or that the substitution of the holiday was improper.

Article 13(C)(a) requires the "signatories" to the collective agreement to substitute the "more generally recognized" holiday, where it is the case, in any province or part thereof (and there was no question that the Yukon Territory should be so considered for the purpose of this provision), that a holiday is more generally recognized than one of the holidays listed in the article. It is agreed that in fact, in the Yukon Territory, Gold Discovery Day is more generally recognized than Civic Holiday. That being the case, the signatories were under an obligation to make the substitution. Now consultation between the parties would obviously be desirable for the purpose of ensuring that there was no misunderstanding about the factual situation. Certainly, if the Company were to consult with anyone as to the administration of Collective Agreement 5.39 in that regard, it ought to have consulted with Mr. Henham. But since it is an agreed fact that Gold Discovery Day is the more generally recognized holiday, it must be noted that Mr. Henham himself was under an obligation, under Article 13(C)(a), to ensure that the substitution was made.

In the result, then, there can be no doubt that Gold Discovery Day was properly substituted for Civic Holiday as a general holiday in the Yukon Territory in 1972. In 1973, the date of Civic Holiday was worked, apparently without protest from anyone, as a normal work day, and Gold Discovery Day would have been observed as a holiday. This was proper, having regard to the more general recognition of that day as a holiday.

That was the effect of the provisions of Article 13(C)(a) of the Collective Agreement.

There was, therefore, no violation of Article 13(C)(a), which was properly applied, and there is no proper basis for any claim for holiday pay in respect of Civic Holiday, on behalf of employees in the Yukon Territory. The grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR