

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 528

Heard at Montreal, Wednesday, October 15, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

The Brotherhood alleges that the Company violated Article 8.3 of the Agreement when it failed to give twenty-one Warehousemen individual written notices of four days that they were required to work on a general holiday and then declined to pay the employees concerned general holiday pay because they failed to report for duty as directed by posted Company notices.

JOINT STATEMENT OF ISSUE:

On June 18, 1974 two Company notices were posted in the time clock area of the Bonaventure Express terminal directing sixty-three Warehousemen to report for work on June 25, 1974, a general holiday for the employees concerned. Twenty-one of the Warehousemen concerned failed to report for work on June 25, 1974 and as a consequence the Company did not pay them for the general holiday under its interpretation of Article 8.3. The Brotherhood contends that the employees concerned should be paid for the general holiday because the notices posted by the Company did not meet the requirements of Article 8.3 and alleged that to meet those requirements the Company must give individual written notices to each employee. The Company disputes this interpretation of Article 8.3.

This grievance has been processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal
J. F. Curran – Labour Relations Research Analyst, Montreal
J. P. Leclerc – Terminal Supervisor, Montreal
P. J. Thivierge – Regional Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. E. Jutras – Regional Vice President, Montreal
R. Henham – Regional Vice President, Vancouver
I. Quinn – Local Chairman, Montreal
J. A. Pelletier – National Vice President, Montreal

AWARD OF THE ARBITRATOR

Article 8.3 deals with certain qualifications (others are spelled out in Article 8.2) for holiday pay, for which Article 8 generally makes provision. The grievors, it seems, would have been entitled to holiday pay for St. Jean Baptiste Day in the normal course. They were, however, required to work on that day. They did not report for work, and the Company did not pay them for the holiday. The matter is governed by the last paragraph of Article 8.3, which is as follows:

An employee who is required to work on a general holiday shall be given an advance notice of four calendar days except for unforeseen exigencies of the service in which case he will be notified not later than the completion of his shift or tour of duty immediately preceding the holiday that his services will be required. An employee who fails to report after having been so notified that his services will be required, will not be paid for the holiday.

The issue in this case is whether the grievors received proper notice that they were required to work. If they did have such notice, then, by failing to report, they forfeited their right to holiday pay. If they did not have such notice, then they were entitled to pay for the holiday.

Article 8.3 requires that an employee required to work on a general holiday be given an advance notice of four calendar days. In the instant case, there were no "unforeseen exigencies", and the question is simply whether an advance notice of four calendar days was given. I agree with the general contention of the Union to the effect that there is an onus on the Company to advise each employee who is required to work, that it will be necessary for him to report. The mere posting of a general notice does not, of itself, necessarily satisfy this requirement. There is nothing in Article 8 however, to support the view that each employee required to work must be given individual written notice to that effect. The giving of such a notice might be the safest practice, from the Company's point of view, but it is not a requirement under the collective agreement.

In the instant case a general notice was posted, advising certain employees that they were required to work on the holiday. The notice was posted in accordance with the time limits, and most of the employees concerned became aware of it, and complied with it, as was proper. The grievors may not have seen the notice, or may not have been aware that their services were required on the holiday. The mere posting of the notice would not, of itself, constitute notice to them, unless their attention was expressly directed to it. If, however, they did in fact have actual notice, within the time limits, that their services were required, then, being "so notified", they would have to report for work, or forfeit their holiday pay. The essence of the provision is that each individual required to work have actual notice to that effect. Any individual receiving such notice in timely fashion is bound by it. Nothing turns on the degree of formality with which the notice is given. A written notice is, of course, harder to deny, but an oral notice may also be effective.

From the material before me, it appears that at least some, if not all, of the grievors were advised, orally, that they would be required to work on the holiday. If such notice was given to them four days or more before the holiday, then it would be a proper notice under Article 8.3, even though not in writing. Any of the grievors who received such notice, but failed to report, have forfeited their holiday pay and their grievances are dismissed. In the case of any grievors who did not receive four days' actual notice that they were required to work, their grievances are allowed. Where there is a question as to whether any employee in fact had actual timely notice, the onus is on the Company to establish that notice was given. I retain jurisdiction to determine any question of fact necessary to be resolved in order to complete this award.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR