

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 615

Heard at Montreal, Wednesday, June 15, 1977

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Payment for statutory holiday (Christmas).

JOINT STATEMENT OF ISSUE:

Trainman J.A. Collins' job on the road switcher was cancelled on arrival at Talzie on December 23, 1976. Trainman J.A. Collins subsequently deadheaded to Sept-Îles on same train and submitted a combined ticket for 665 miles.

The Union claims that the payment of the statutory holiday should be paid in accordance with the last ticket submitted by the employee. The Railway maintains that the payment for a statutory holiday is based on the last tour of duty worked prior to the general holiday which in this case shall not include the deadhead part of the combined ticket that the employee combined without having the proper authority to do so. The grievance was denied.

FOR THE EMPLOYEE:

(SGD.) G. ROBICHAUD
VICE-CHAIRMAN

FOR THE COMPANY:

(SGD.) F. LEBLANC
SUPERINTENDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin – Counsel, Montreal
G. A. Dolliver – Superintendent, Train Movement, Sept-Îles
J. Y. Tardif – Assistant – Labour Relations, Sept-Îles
C. Nobert – Assistant – Labour Relations, Sept-Îles

And on behalf of the Brotherhood:

R. Cleary – Counsel, Montreal
G. Robichaud – Vice-Chairman, Sept-Îles

AWARD OF THE ARBITRATOR

It appears to be common ground that the grievor was entitled to holiday pay pursuant to Article 30.02, which is as follows:

30.02 A trainman who qualifies within the requirements of Part IV of the Canada Labour (Standards) Code and who is not required to work on a general holiday shall be paid an amount equal to his earnings, exclusive of overtime paid at the rate of time and one half, for the last tour of duty he worked prior to the general holiday.

In the French version, that article reads as follows:

30.02 *Un agent de train qui se qualifie selon les dispositions de la Partie IV du Code du Travail du Canada (Normes) et qui n'est pas appelé au travail un jour férié sera payé un montant égal à ses gains pour la dernière tâche effectuée avant ce jour férié, à l'exclusion des heures supplémentaires payées au taux d'une fois et demie.*

The question to be determined, then, is the following: what were the grievor's "earnings, exclusive of overtime ... for the last tour of duty he worked prior to the general holiday". It is significant to note that in terms of the French version of Article 30.02 the question would be what were « *ses gains pour la dernière tâche effectuée avant ce jour férié, à l'exclusion des heures supplémentaires ...* ».

The grievor's last tour of duty on which work was performed was on December 23 – 24, 1976. It was on his return to Talzie at 00:09 on December 24 that his job was cancelled, and it was subsequent to that that he deadheaded to Sept-Îles. It was proper for the grievor to submit a combined ticket incorporating the claim for deadheading with the other wage claims. This was permitted by Article 27.02, which proves as follows:

27.02 Deadheading may be combined with service and paid time or mileage, whichever is the greater.

While the grievor properly combined deadheading with "service" for the purposes of his wage claim, it does not follow from that that the deadheading became "service", or that it was part of "the last tour of duty he worked" prior to the holiday. Still less could it be said, having regard to the French version of Article 30.02, that the deadheading came within the scope of « *la dernière tâche effectuée* » before the holiday. Payment for deadheading is a separate matter under Article 27, and under Article 27.01 payment is under the basic day rule, although it may be combined with service under Article 27.02. This indicates that it is a separate head of payment, and if it is to be regarded as a tour of duty in itself, it would be separable and lead, at least in the circumstances of this case, to a substantially lower holiday payment. Here the deadheading was "combined with service" only in the sense that miles deadheaded were added to the wage claim. It was not part of the grievor's actual tour of duty.

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